



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

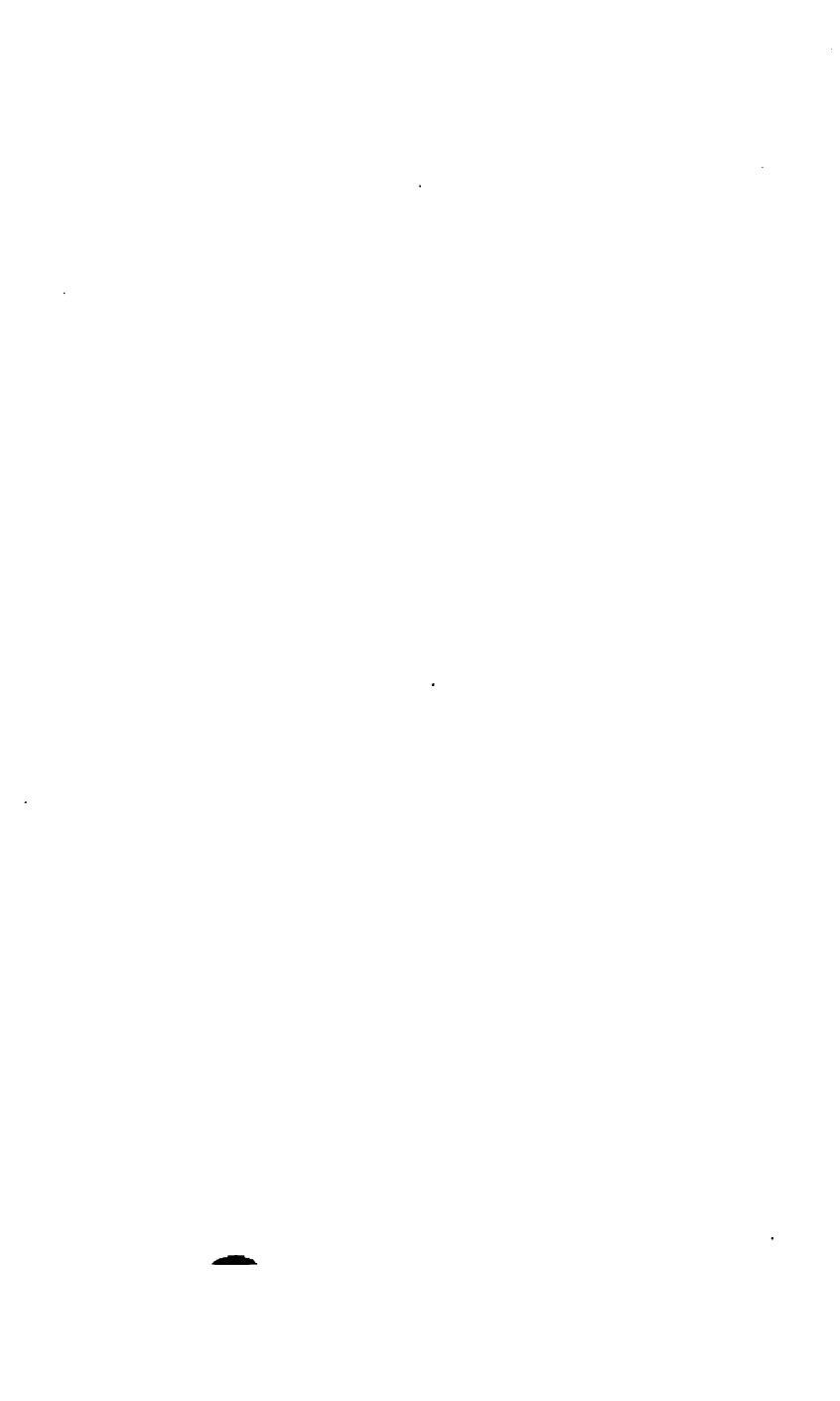




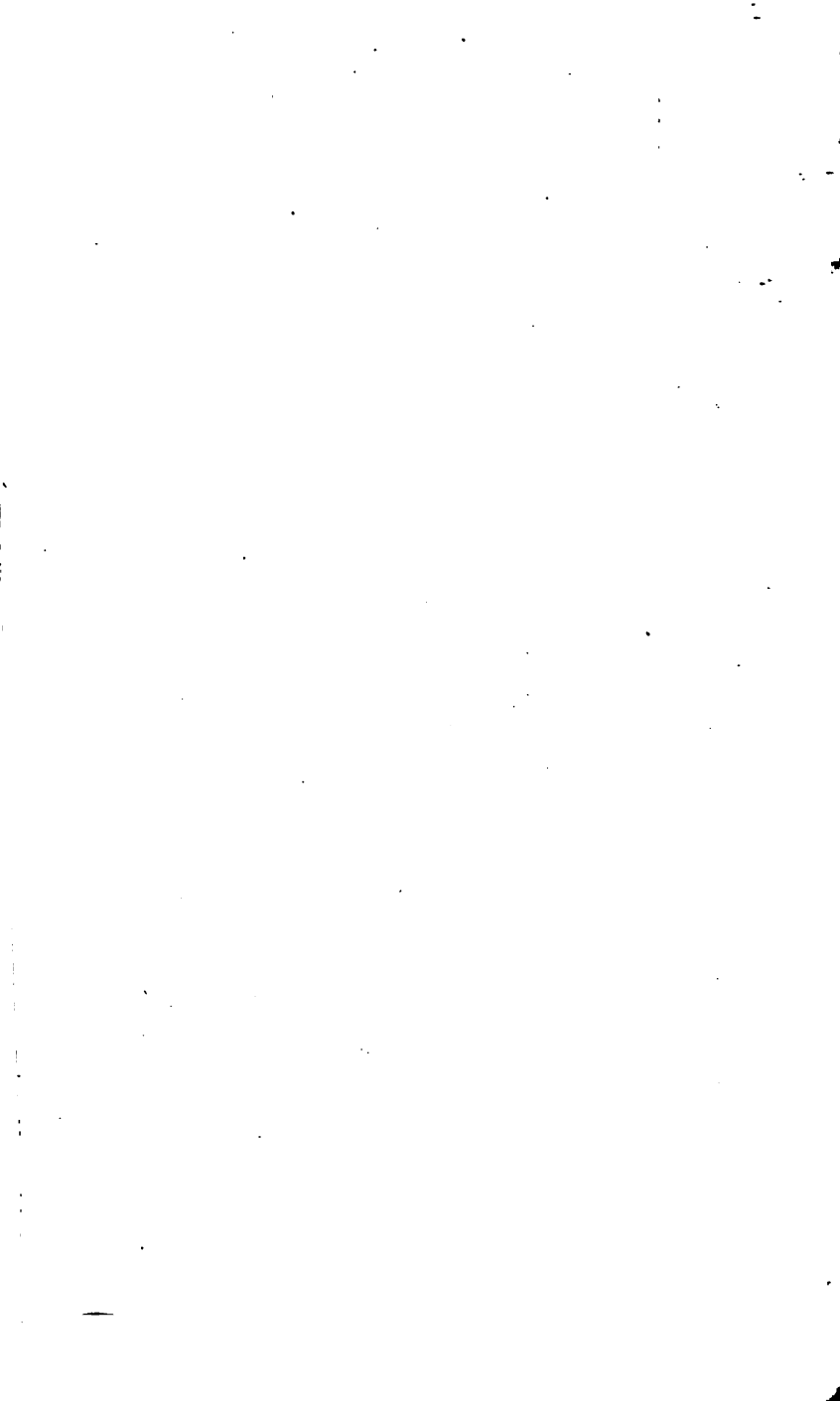




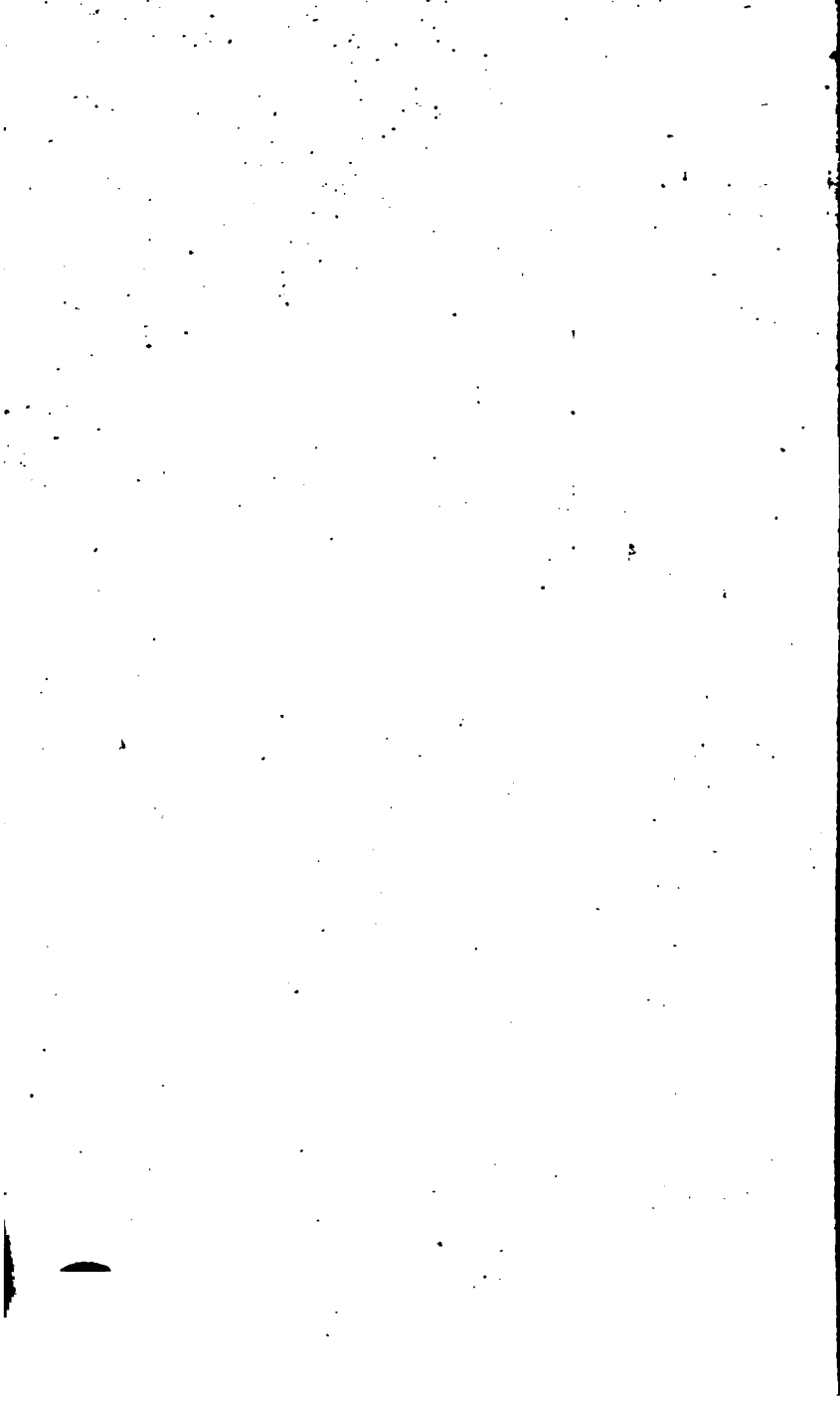




DL  
ARC  
EM



# **SETTLED LAND STATUTES.**



# SETTLED LAND STATUTES:

COMPRISING

THE SETTLED LAND ACT, 1882,

THE

IMPROVEMENT OF LAND ACT, 1864,

AND THE

SETTLED ESTATES ACT, 1877.

*With an Introductory Chapter and Notes.*

TOGETHER WITH

CONVEYANCING PRECEDENTS OF SETTLEMENTS

AND

CONVEYANCES, AND OTHER INSTRUMENTS

RELATING TO SETTLED LAND.

BY

LEOPOLD GEORGE GORDON ROBBINS,

*Of Lincoln's Inn, Barrister-at-Law.*

LONDON:

HENRY SWEET, 3, CHANCERY LANE,

*Law Publisher.*

1882

LONDON :

PRINTED BY C. F. ROWORTH, BREAM'S BUILDINGS, CHANCERY LANE.



## PREFACE.

---

THE Settled Land Act, 1882, the Improvement of Land Act, 1864, and the Settled Estates Act, 1877, together with certain clauses of other Acts, which will be found cited and, for the most part, set out in full in the following pages, now form what may be regarded as a Code of the Law with regard to the Settlement of Real Property.

The Settled Land Bill was introduced in the House of Lords by Earl Cairns, then Lord Chancellor, in February, 1880, together with two other Bills containing provisions which, with modifications and additions, have since become law, as the Conveyancing and Law of Property Act, 1881; the Conveyancing Act, 1882; and the Solicitors' Remuneration Act, 1881. The Settled Land Bill, after having been twice withdrawn, was reintroduced by Earl Cairns in the House of Lords at the commencement of last Session.

Having passed the Lords, and after a second reading in the Commons, it was referred to a Select Committee, presided over by Sir R. Assheton Cross, and comprising Sir Henry James, A.G., Mr. Osborne Morgan, Q.C., Mr. Horace Davey, Q.C., Mr. Macnaughten, Q.C.,

Mr. Gregory, and other eminent legal members of the House, by whom several modifications were recommended; of these the most important were as follows:—The clauses empowering tenants for life to charge upon the settled lands their own expenditure for improvements, and providing that capital money arising under the Act might be applied in payment of compensation under the Agricultural Holdings Act, were struck out; and the following new provisions were added to the Act, viz.: section 30 (Extension of the Improvement of Land Act, 1864); section 37 (Heirlooms); part of section 48 (Constitution of Land Commissioners); section 49 (Filing of Certificates of Commissioners); section 62 (Tenant for life, lunatic); and section 63 (Provision for case of trust to sell and reinvest in land). The Bill in its altered form was read a third time in the House of Commons, and, the alterations having been accepted by the Lords, it received the Royal Assent on the 10th of August.

The present Attorney-General is reported ("Times," 19th July, 1882) to have expressed his belief, that, though the Bill had passed without attracting much notice, it would be found, when its effect was understood, to be one of the greatest reforms that had been effected for many years. Into the political or social aspects of this question, it would not be proper here to enter; but, looking at the legal aspect, it is evident that a change of great importance has been introduced as regards the settlement of land, and the mode of dealing with it when settled.

The professed aim of this Act is to give to every tenant for life full power of dealing, by way of sale, exchange, lease, &c., with the settled land, but to protect the settled property under its altered conditions, after being so dealt with, for the benefit of the several persons interested therein by virtue of the terms of the settlement.

It has hitherto been not unusual for settlements of real estate to contain powers of leasing exerciseable by the tenant for life, either with or without the consent of the trustees of the settlement; but powers of sale and exchange have, according to the general practice of conveyancers, been vested in the trustees. By the Settled Land Act, 1882, powers of dealing with all or any part of the settled land (except the principal mansion-house and park) by way of sale, exchange, partition, &c. are given to the tenant for life, without any necessity for obtaining the co-operation or consent of the trustees; these powers, as also powers of leasing and managing the property, thus become as inalienable and necessary incidents of an estate for life as they hitherto have been of an estate in fee simple.

Besides these powers, the Act confers on the tenant for life further control over the settled property. All investments and changes of investment of the proceeds of sales, &c., and other capital moneys arising under the Act, are to be by his direction. The range of authorized modes of investment and application of capital moneys is large, and includes expenditure in improvements of the settled land. Moreover, if by a settlement

powers of sale, or for other purposes provided for by this Act, are given to trustees, the consent of the tenant for life is henceforward rendered necessary to the exercise of such powers, notwithstanding anything to the contrary in the settlement.

On the other hand, the large authority thus conferred upon the tenant for life is checked by restrictive provisions. At the outset, when first contemplating an exercise of any of his powers of dealing with the settled land, he is met by the requirement of the Act, that he shall give notice of his intention to the trustees of the settlement (who at the time of notice given must be at least two in number), and separately to their solicitor, and from the giving of such notice a month is to elapse before the tenant for life is to be at liberty to deal with the property, or to make any contract to do so, during which time the trustees may raise objections and apply to the Court to decide the difference which has arisen with regard to the proposed exercise of his powers. The omission of the tenant for life to comply with this requirement will not, however, affect the validity of a contract entered into by him with a person dealing "in good faith," and the true construction of section 45 of the Act is not so free from doubt as to justify a confident expression of opinion as to how far the restriction it professes to impose on the tenant for life is likely to prove effectual. But if the meaning of this section is (as appears, perhaps, on the whole most reasonable and consistent with other provisions of the Act) that the tenant for life must in every case of exercise of his

powers of sale, lease, &c. give the prescribed notice, in order to render the intended transaction valid as between himself and other persons beneficially interested in the property, and that if the requisite number of the trustees are not then in existence, he must bring them into existence to receive the notice, it is obvious that the restriction imposed by this section is of great importance, and is one which (so far as its operation is not excluded) reduces a tenant for life to less independence of action, with regard to the exercise of some, at least, of his powers, than he usually enjoys under an ordinary real property settlement.

Further, the tenant for life is not empowered to receive or give receipts for capital moneys, and payment thereof must, in order to obtain an effectual discharge, be made either to the trustees of the settlement or into Court, at the option of the tenant for life. The principal mansion house, and lands usually occupied therewith, cannot be dealt with by way of either sale or lease without the consent of the trustees or of the Court. Chattels, settled as heirlooms, are not to be parted with, nor others substituted in their place, except with the sanction of the Court. And, lastly, the laying out of money in improvements on the estate is to be carried out under the supervision of the Court or the Land Commissioners, with a view to insuring that the improvements shall be properly executed, and be worth the money laid out upon them.

For the purposes of dealing with improvements of settled lands, the Commissioners are armed with the

powers conferred on them by the Improvement of Land Act, 1864. This Act has hitherto not occupied the attention of the Courts to any great extent, but it has been employed extensively and with little friction, principally through the medium of Drainage and Land Improvement Companies. It is probable that in future it will have an extended operation where it is wished to charge settled land for the purpose of providing money for improvements, or supplementing moneys provided by sales of outlying portions. It must be borne in mind that the Settled Land Act, 1882, authorizes a mortgage of the settled land only for the purpose of enfranchisement, or raising equality money on exchange or partition.

The Settled Estates Act, 1877, still remains in full force, and recourse can be had to its powers and provisions, whenever circumstances may render it advisable to do so. In the absence of judicial decision with regard to points of doubt or difficulty as to the provisions of the Settled Land Act, 1882, the decisions of the Courts with regard to corresponding provisions of the earlier Act afford, when compared with the text of that Act, the best available mode of arriving at a solution. It is, also, to be supposed that there must be a large number of cases at the present moment in which proceedings under the Settled Estates Act have already been commenced. For these reasons it has been thought that the insertion of the Act in this work will be of service and convenience.

Part II. of this volume contains conveyancing pre-

cedents of settlements, conveyances and other deeds relating to settled land. It will be seen, that by the combined operation of the Conveyancing Act of last year, and of the Settled Land Act, the length of these instruments is considerably reduced. It not only might be productive of inconvenience to give, by the terms of the settlement, to trustees powers collateral to those given by statute to the tenant for life; but it would be of little use to do so, as, notwithstanding anything to the contrary, the consent of the tenant for life will now be necessary for the exercise by the trustees of their powers. Accordingly no such powers are given to trustees in these precedents, except in the case of a devise upon trust for sale of land for the benefit of the testator's widow and issue.

By numerous cross-references, and by notes appended to each section of the several Acts which appeared to afford points for comment or illustration, and giving the latest reported decisions with regard to such points, an attempt has been made in the following pages to produce a handy and convenient manual of the law with regard to the settlement of real property and dealings with settled land, which may afford some assistance to members of both branches of the legal profession who may have had little leisure and opportunity hitherto to study the changes effected by recent legislation.

I desire here to express my thanks to the Inclosure Commissioners for the information and documents

kindly supplied to me with regard to the Improvement of Land Act, 1864 ; and also to Mr. J. A. Tompson of the Inner Temple, one of the executors of the late Mr. John Young Kemp of Lincoln's Inn, for the loan of the MS. precedents of that eminent conveyancer, of which I have largely availed myself in framing the precedents contained in this volume.

L. G. G. R.

LINCOLN'S INN,  
*October, 1882.*



# TABLE OF CONTENTS.

---

	PAGE
TABLE OF CASES CITED, with additional references .....	xxv
TABLE OF STATUTES .....	xxxiv

---

## PART I.

### CHAPTER I.

General effect of the Settled Land Act, 1882, the Improvement of Land Act, 1864, and the Settled Estates Act, 1877.....	1—17
---	------

---

### CHAPTER II.

The Settled Land Act, 1882 .....	18—123
----------------------------------	--------

#### SECT. I.—PRELIMINARY.

1. Short title; commencement; extent.....	18
---	----

#### II.—DEFINITIONS.

2. Definition of settlement, tenant for life, &c. ....	19
--	----

#### III.—SALE; ENFRANCHISEMENT; EXCHANGE; PARTITION.

##### *General Powers and Regulations.*

3. Powers to tenant for life to sell, &c. ....	27
4. Regulations respecting sale, enfranchisement, exchange, and partition .....	29

##### *Special Powers.*

5. Transfer of incumbrances on land sold, &c. ....	30
--	----

#### IV.—LEASES.

##### *General Powers and Regulations.*

6. Power for tenant for life to lease for ordinary or building or mining purposes .....	31
7. Regulations respecting leases generally .....	32

**The Settled Land Act, 1882—continued.**

SECT.	<i>Building and Mining Leases.</i>	PAGE
8.	Regulations respecting building leases .....	34
9.	Regulations respecting mining leases .....	36
10.	Variation of building or mining lease according to circumstances of district .....	37
11.	Part of mining rent to be set aside .....	39

*Special Powers.*

12.	Leasing powers for special objects .....	39
-----	--	----

*Surrenders.*

13.	Surrender and new grant of leases .....	40
-----	---	----

*Copyholds.*

14.	Power to grant to copyholders licences for leasing .....	42
-----	--	----

**V.—SALES, LEASES, AND OTHER DISPOSITIONS.***Mansion and Park.*

15.	Restriction as to mansion house, park, &c. ....	42
-----	---	----

*Streets and Open Spaces.*

16.	Dedication for streets, open spaces, &c. ....	44
-----	---	----

*Surface and Minerals apart.*

17.	Separate dealing with surface and minerals with or without wayleaves, &c. ....	45
-----	--	----

*Mortgage.*

18.	Mortgage for equality, money, &c. ....	46
-----	--	----

*Undivided Share.*

19.	Concurrence in exercise of powers as to undivided share ....	47
-----	--	----

*Conveyance.*

20.	Completion of sale, lease, &c. by conveyance .....	47
-----	--	----

**VI.—INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY.**

21.	Capital Money under Act; investment, &c. by trustees or Court .....	49
22.	Regulations respecting investment, devolution, and income of securities, &c. ....	54
23.	Investment in land in England .....	57
24.	Settlement of land purchased, taken in exchange, &c. ....	57

**VII.—IMPROVEMENTS.***Improvements with Capital Trust Money.*

25.	Description of improvements authorized by Act. ....	59
26.	Approval by Land Commissioners of scheme for improvement and payment thereon .....	64
27.	Concurrence in improvements .....	65
28.	Obligation on tenant for life and successors to maintain, insure, &c. ....	65

# TABLE OF CONTENTS.

XV

## The Settled Land Act, 1882—continued.

### SECT. *Execution and Repair of Improvements.* PAGE

29. Protection as regards waste in execution and repair of improvements ..... 67

### *Improvement of Land Act, 1864.*

30. Extension of 27 & 28 Vict. c. 114, s. 9 ..... 69

## VIII.—CONTRACTS

31. Power for tenant for life to enter into contracts ..... 69

## IX.—MISCELLANEOUS PROVISIONS.

32. Application of money in Court under Lands Clauses and other Acts ..... 72  
 33. Application of money in hands of trustees under powers of settlement ..... 72  
 34. Application of money paid for lease or reversion ..... 73  
 35. Cutting and sale of timber, and part of proceeds to be set aside ..... 73  
 36. Proceedings for protection or recovery of land settled or claimed as settled ..... 75  
 37. Hairlooms ..... 76

## X.—TRUSTEES.

38. Appointment of trustees by Court ..... 77  
 39. Number of trustees to act ..... 82  
 40. Trustees' receipts ..... 83  
 41. Protection of each trustee individually ..... 84  
 42. Protection of trustees generally ..... 86  
 43. Trustees reimbursement ..... 87  
 44. Reference of differences to Court ..... 87  
 45. Notice to trustees ..... 88

## XI.—COURT; LAND COMMISSIONERS; PROCEDURE.

46. Regulations respecting payments into Court, application, &c.. 90  
 47. Payment of costs out of settled property ..... 95  
 48. Constitution of Land Commissioners; their powers, &c. .... 96  
 49. Filing of certificates, &c. of Commissioners ..... 99

## XII.—RESTRICTIONS, SAVINGS, AND GENERAL PROVISIONS.

50. Powers not assignable; contract not to exercise powers void.. 99  
 51. Prohibition or limitation against exercise of powers void .... 101  
 52. Provision against forfeiture ..... 102  
 53. Tenant for life trustee for all parties interested ..... 102  
 54. General protection of purchasers, &c. .... 105  
 55. Exercise of powers; limitation of provisions, &c. .... 105  
 56. Saving for other powers ..... 106  
 57. Additional or larger powers by settlement ..... 107

## XIII.—LIMITED OWNERS GENERALLY.

58. Enumeration of other limited owners to have powers of tenant for life ..... 108

**The Settled Land Act, 1882—continued.**

SECT.	XIV.—INFANTS; MARRIED WOMEN; LUNATICS.	PAGE
59.	Infant absolutely entitled to be as tenant for life .....	111
60.	Tenant for life, infant .....	111
61.	Married woman, how to be affected .....	112
62.	Tenant for life, lunatic .....	114
	XV.—SETTLEMENT BY WAY OF TRUSTS FOR SALE.	
63.	Provision for case of trust to sell and re-invest in land .....	115
	XVI.—REPEALS.	
64.	Repeal of enactments in schedule .....	120
	XVII.—IRELAND.	
65.	Modifications respecting Ireland .....	121
	SCHEDULE .....	123

**CHAPTER III.****The Improvement of Land Act, 1864 .....** 124—202

1.	Recited Act 12 & 13 Vict. c. 100, repealed .....	124
	<i>Commissioners, Landowners, &amp;c.</i>	
2.	Interpretation of "the commissioners" .....	125
3.	Provisions of 9 & 10 Vict. c. 101, &c. to extend and be applicable to proceedings of commissioners .....	125
4.	Assistant commissioners may take declarations and examine witnesses .....	125
5.	Punishment of persons giving false evidence .....	125
6.	As to service of notices on commissioners .....	126
7.	As to service of notices on other persons .....	126
8.	Interpretation of "landowner" .....	126
9.	Interpretation of "improvement of land" .....	128
10.	Interpretation of "person" .....	128
	<i>Proceedings Preliminary to Sanction of Improvements.</i>	
11.	Application to commissioners to sanction improvements ....	128
12.	Joint application by several landowners .....	129
13.	Commissioners may issue forms .....	129
14.	Require security for expenses .....	129
15.	Cause application to be investigated .....	130
16.	And require proposed improvements to be modified .....	131
17.	Advertisements and notices preliminary to sanction .....	131
18.	Power of dissent by persons interested, and protection of landowner's infant children .....	132
19.	The same in case of navigable rivers and canals .....	133
20.	Consents necessary in case of church lands .....	134
21.	In case of dissent, or when landowner's infant children are to be protected, Court of Chancery or session may authorize commissioners to proceed .....	134

**The Improvement of Land Act, 1864—continued.**

SECT.	PAGE
22. Service of notice under preceding section .....	136
23. And costs may be given by the Court .....	136
24. Representation of persons under disability for applications and dissents under preceding sections .....	136
<i>Sanction of Improvements, and Rights thereunder.</i>	
25. Commissioners' order sanctioning improvements .....	137
26. Forms of orders sanctioning improvements to be prepared by commissioners; what they must contain .....	138
27. They may be called provisional orders, and may be assigned to parties agreeing to execute improvements .....	138
28. Provision for death of landowner pending completion of improvements .....	139
29. Provisional orders may be modified .....	140
<i>Execution of Improvements.</i>	
30. Detailed specifications to be delivered in advance .....	141
31. And approved before execution of works .....	141
32. Adjoining lands, or easements over them, may be sold for purpose of improvements, and conveniences over adjoining lands for the execution of improvements contracted for ..	142
33. Works necessary to be made on adjoining lands for execution of improvements may be made under certain Acts .....	144
34. Provisional order to protect from impeachment of waste, and to authorize getting materials from land, &c. ....	145
35. Saving rights of the Crown .....	146
36. Saving rights of the commissioners of her Majesty's works, &c. ....	146
37. Saving rights of Duchy of Cornwall .....	147
38. Saving rights of Duchy of Lancaster .....	147
39. Saving rights of the Admiralty, and of the Board of Trade ..	148
40. Plans to be deposited with Admiralty before commencing works below high-water mark .....	148
41. Landowner to pay expenses of survey ordered by Admiralty ..	150
42. Saving rights of her Majesty's principal Secretary of State for War .....	150
43. Rights of Commissioners of Sewers saved .....	151
44. Works connected with Thames to be executed under direction of Conservators of Thames .....	152
45. Metropolitan Board of Works, &c. protected .....	152
46. Water companies and commissioners protected .....	154
47. Rivers, canals, &c. protected .....	155
48. Commissioners may inspect works .....	156
<i>Charges for Improvements.</i>	
49. Commissioners to execute charge on completion of works, or of some part thereof .....	156
50. Expenses of application and certain contracts may be included in charge .....	157
51. The charges to be by way of rent-charge created by absolute order .....	158
52. And may be made according to form in schedule (B.) .....	159

**The Improvement of Land Act, 1864—continued.**

SECT.	PAGE
53. Expenditure made under this Act may be charged under Acts of improvement companies .....	159
54. Improvement companies may exercise the powers of this Act, on conforming to its procedure. As also companies authorized to execute improvements in the United Kingdom .....	159
55. Absolute order to be conclusive evidence of charge .....	160
56. Registry of rent-charges in Ireland, Middlesex, Yorkshire and Scotland .....	160
57. Landowner may borrow the amount of certain public assessments, and charge same on inheritance .....	161
58. In form specified, together with costs of application .....	162
59. Grantee to have charge for principal money from time to time unrepaid, with priority over other incumbrances .....	162
60. Charges to be personal property, but money authorized to be invested on real security may be invested therein, or on mortgages thereof .....	163
61. Charges not to preclude trustees from investing in purchase or on mortgage of lands .....	163
62. Proprietor of Scotch entailed estate may avail himself of Act, and rent-charge to be charge on such estate .....	164
63. Rent-charges to be recoverable as tithe rent-charges or feu duties .....	164
64. Interest on arrears of rent-charges .....	165
65. Assignment of charges .....	165
66. Tenants for life to keep down rent-charges .....	166
67. Tenant may deduct rent-charge, unless he has agreed to pay it .....	167
68. Rent-charges may be apportioned or part of the land charged released therefrom .....	167
69. Form, registry, and defect of orders of apportionment and release .....	169
70. Charges apportioned, or from which part of the lands have been released, to be deemed original charges .....	169
71. Several charges may be dealt with in one order of apportionment or release .....	170

*Upholding Improvements.*

72. Improvements to be upheld, and condition thereof certified if required .....	170
73. Power to enter on neighbouring lands for repair of works, making compensation .....	171
74. Farmhouses, &c. to be insured; power to insure in case of default .....	172
75. Inclosure commissioners may compel maintenance of improvements .....	173
76. Inclosure commissioners may give relief from maintenance of improvements .....	174
77. Admiralty may remove works abandoned or fallen into decay .....	176

*Subscription to Railways.*

78. Conditions for application to commissioners .....	175
79. Commissioners' proceedings on application .....	176

## TABLE OF CONTENTS.

**xix**

### **The Improvement of Land Act, 1864—continued.**

SECT.	PAGE
80. Provisional order sanctioning charge.....	176
81. Companies empowered to lend.....	177
82. Commissioners' absolute order and its conditions .....	177
83. Form and effect of absolute order .....	178
84. Notice thereof to be entered in register of shareholders.....	178
85. Person liable to pay charge to be entitled for the time being to the shares .....	179
86. And to have them stand in his own name.....	179
87. Rights and duties of persons registered for the time being in respect of the shares .....	179
88. Entire shares to belong to parties in proportion to their pay- ments, and to be released to them from time to time.....	180
89. Shares not claimed within two years from expiration of term to belong to person bound to make last payment of charge	181
SCHEDULES to which the foregoing Act refers .....	183
ORDERS, FORMS, &c. issued by the Inclosure Commission under the Improvement of Land Act, 1864 .....	189

## CHAPTER IV.

<b>The Settled Estates Act, 1877.....</b>	<b>203—253</b>
1. Short title .....	203
2. Interpretation of "settlement" and "settled estates".....	203
3. Interpretation of "the Court" .....	206
4. Power to authorize leases of settled estates .....	207
5. Leases may contain special covenants .....	210
6. Parts of settled estates may be leased .....	210
7. Leases may be surrendered and renewed .....	210
8. Power to authorize leases to extend to preliminary contracts.	210
9. Powers of leasing to include powers to lords of settled manors to give licences to their copyhold or customary tenants to grant leases.....	211
10. Mode in which leases may be authorized .....	211
11. What evidence to be produced on an application to authorize leases .....	211
12. After approval of a lease, Court to direct who shall be the lessor	212
13. Powers of leasing may be vested in trustees.....	212
14. Conditions that leases be settled by the Court not to be in- serted in orders made under this Act .....	213
15. Conditions where inserted may be struck out .....	213
16. Court may authorize sales of settled estates and of timber ..	214
17. Proceedings for protection .....	215
18. Consideration for land sold for building may be a fee-farm rent	215
19. Minerals, &c. may be excepted from sales .....	215
20. Court may authorize dedication of any part of settled estates for streets, roads and other works .....	216
21. As to laying out and making and executing and maintaining streets, roads and other works, and expenses thereof ....	216

**The Settled Estates Act, 1877—continued.**

SECT.	PAGE
22. How sales and dedications are to be effected under the direction of the Court .....	217
23. Application by petition to exercise powers conferred by this Act .....	218
24. With whose consent such application to be made .....	219
25. Court may dispense with consent in respect of certain estates .....	220
26. Notice to be given to persons who do not consent to or concur in the application .....	221
27. Court may dispense with notice under certain circumstances .....	222
28. Court may dispense with consent, having regard to the number and interests of parties .....	222
29. Petition may be granted without consent, saving rights of non-consenting parties .....	223
30. Notice of application to be served on all trustees, &c. ....	223
31. Notice of application to be given in newspapers, if Court direct .....	224
32. No application under this Act to be granted where a similar application has been rejected by Parliament .....	224
33. Notice of the exercise of powers to be given as directed by the Court .....	225
34. Payment and application of moneys arising from sales or set aside out of rent, &c. reserved on mining leases .....	225
35. Trustees may apply moneys in certain cases without application to Court .....	227
36. Until money can be applied to be invested, and dividends to be paid to parties entitled .....	227
37. Court may direct application of money in respect of leases or reversions as may appear just .....	228
38. Court may exercise powers repeatedly, but may not exercise them if expressly negatived .....	229
39. Court not to authorize any act which could not have been authorized by the settlor .....	229
40. Acts of the Court in professed pursuance of this Act not to be invalidated .....	229
41. Costs .....	230
42. Rules and orders .....	230
43. Rules and orders to be laid before Parliament .....	232
44. Concurrent jurisdiction of the Court of Chancery of the County Palatine of Lancaster .....	232
45. Application for lease or sale in Ireland may be made to Landed Estates Court .....	233
46. Tenants for life, &c. may grant leases for 21 years .....	234
47. Against whom such leases shall be valid .....	235
48. Evidence of execution of counterpart lease by lessee .....	235
49. Provision as to infants, lunatics, &c. ....	235
50. A married woman applying to the Court or consenting to be examined apart from her husband .....	236
51. Examination of married woman how to be made when residing within the jurisdiction of the Court, and how when residing without such jurisdiction .....	237
52. As to application by or consent of married women, whether of full age or under age .....	238



**The Settled Estates Act, 1877—continued.**

SECT.	PAGE
53. No obligation to make or consent to application, &c. ....	238
54. Tenants for life, &c. to be deemed entitled notwithstanding incumbrances .....	238
55. Exception as to entails created by Act of Parliament .....	239
56. Saving rights of lords of manors .....	239
57. To what settlements this Act to extend .....	239
58. Repeal of Acts specified in schedule .....	240
59. Saving .....	240
60. Extent of Act .....	240
61. Commencement of Act .....	240
SCHEDULE .....	240
ORDERS under the Settled Estates Act, 1877 .....	241
APPENDIX .....	247

---

**PART II.**
**CONVEYANCING PRECEDENTS.**


---

**SECTION I.**
**Settlements by Deed and Will .....254—302**

**PRECEDENT I.**—Marriage settlement (statutory form) of land to the use of husband for life, with remainder, subject to an annuity to the wife for her jointure, and to terms to secure portions, to the first and other sons of the marriage, successively in tail male; with remainder to the use of all the daughters as tenants in common in-tail, with cross-remainders 254

**PRECEDENT II.**—Settlement on marriage of freeholds and copyholds of inheritance; conveyance by the intended husband of freeholds to trustees for ninety-nine years to secure pin-money to the intended wife, and subject thereto to the use of the husband for life, with remainder to the use that the wife may receive a jointure, and subject thereto to trustees for 500 years to secure portions for younger children, with remainder to the use of the first and other sons of the marriage successively in tail male, remainder to the husband in fee; trusts of terms for securing pin-money and portions; powers of jointuring and charging portions; larger than statutory powers of leasing, &c.; trusts of copyholds to correspond with uses of freeholds; settlement of chattels as heir-looms ..... 257

	PAGE
PRECEDENT III.—Re-settlement of real estate by a father and eldest son on the marriage of the latter ; limitation of a rent-charge to the intended husband, and of jointure rent-charges to the intended wife ; subject thereto to the father for life, remainders to the intended husband for life, remainder (subject to a term for securing portions) to his first and other sons in tail male, with remainders, comprising limitations to the husband's younger brother for life and his issue in tail ; powers of jointuring and charging portions ; name and arms clause .....	273
PRECEDENT IV.—Settlement on marriage of freeholds to uses, and of leaseholds in trust for the husband and wife successively for life, with remainder to the issue of the marriage as the husband and wife, or the survivor, shall appoint, and, in default of appointment, to the children in equal shares in tail as tenants in common with cross-remainders .....	288
PRECEDENT V.—Strict settlement by will to uses for benefit of testator's brother and his issue ; powers of jointuring and charging portions ; bequest of personalty to follow limitations of the settled land .....	290
PRECEDENT VI.—Settlement by will of land by way of trust for sale ; trusts for benefit of widow and issue ; investment clause ; power to invest in purchase of land ; proviso that solicitor trustee may charge his costs .....	296

---

## SECTION II.

<b>Conveyances by Tenants for Life, &amp;c.....</b>	<b>303—351</b>
PRECEDENT VII.—Conveyance in fee by way of sale of a close of land under the Settled Land Act, 1882 .....	303
PRECEDENT VIII.—Conveyance by way of sale of a farm (part of settled land) sold by public auction, a mortgagee of the fee joins in conveyance to release the land sold from his security..	305
PRECEDENT IX.—Conveyance by way of sale of a large settled estate, including the mansion-house and demesnes, under an order of the Court.....	307

	PAGE
PRECEDENT X.—Conveyance by way of sale of settled land sold for building purposes; grant of rights of way over unsold parts of the settled land; the trustees of the settlement join in the conveyance, for the purpose of giving a receipt for the purchase-money .....	310
PRECEDENT XI.—Deed of dedication for streets, open spaces, &c. accompanying the last precedent .....	312
PRECEDENT XII.—Enfranchisement by a tenant for life, lord of a settled manor, the trustees of the settlement joining, in order to give receipts .....	314
PRECEDENT XIII.—Conveyance of freeholds to trustees, to the uses of a settlement in exchange for settled lands conveyed by the tenant for life by a deed of even date .....	317
PRECEDENT XIV.—Conveyance by way of partition where two females, one of whom is an infant, are entitled to the settled lands as tenants in common in tail .....	320
PRECEDENT XV.—Statutory form of grant by a limited owner under the Places of Worship Act, 1873 .....	322
PRECEDENT XVI.—Statutory form of grant by a limited owner under the School Sites Act, 1841 .....	323
PRECEDENT XVII.—Mortgage by tenant for life of settled lands in fee to raise money required for enfranchisement; the trustees joining in order to give receipts .....	324
PRECEDENT XVIII.—Lease of a farm by a tenant for life .....	325
PRECEDENT XIX.—Lease of a house by a tenant for life at a fine and a rent; a mortgagee of the fee joins in the demise, and the trustees of the settlement are made parties in order to give receipts .....	328
PRECEDENT XX.—Lease for 600 years of a piece of building land at several increasing rents, under an order of the Court authorizing a tenant for life generally to grant such leases in the district .....	332
PRECEDENT XXI.—Lease by tenant for life of coal mines in Lancashire .....	337
PRECEDENT XXII.—Surrender (by endorsement) of a lease, with a view to the granting of a new lease .....	351

## SECTION III.

	PAGE
<b>Miscellaneous Deeds</b> .....	352—364
<b>PRECEDENT XXIII.</b> —Disentailing deed by tenant for life and tenant in tail of freeholds and money to be laid out in purchase of land to be settled .....	352
<b>PRECEDENT XXIV.</b> —Disentailing deed by tenant in tail in possession of equitable estate in copyholds.....	355
<b>PRECEDENT XXV.</b> —Appointment of a new trustee by endorsement on deed of re-settlement (Precedent III.) .....	356
<b>PRECEDENT XXVI.</b> —Appointment of new trustees of a will of settled land and personal estate when no person has been nominated by the will for that purpose.....	359
<b>PRECEDENT XXVII.</b> —Disclaimer of the trusts of a settlement ..	360
<b>PRECEDENT XXVIII.</b> —Release to the trustees of a will devising and bequeathing real and personal estate upon trust for sale and conversion, upon distribution of the trust property after the death of the tenant for life between the testator's two children, a daughter's share being transferred to the trustees of her marriage settlement .....	361
—	
<b>INDEX TO STATUTES AND NOTES</b> .....	365
<b>INDEX TO CONVEYANCING PRECEDENTS</b> .....	386

# TABLE OF CASES,

WITH ADDITIONAL REFERENCES.

## A.

	PAGE
Abergavenny, Earl of, <i>v.</i> Bruce, L. R., 7 Ex. 145; 20 W. R. 462; 41 L. J., Ex. 121; 26 L. T. 514 .....	110
Adair, Re, L. R., 16 Eq. 124; 42 L. J., Ch. 841 .....	49, 206, 215
Adams, Re, 12 Ch. D. 634; 48 L. J., Ch. 613; 28 W. R. 163; 41 L. T. Rep. 667 .....	80, 214
Albemarle, Earl of, <i>v.</i> Rogers, 2 Ves. 477 .....	24
Alexander <i>v.</i> Mills, L. R., 6 Ch. A. 124; 19 W. R. 310; 40 L. J., Ch. 241; 24 L. T. 128 .....	23
Allan <i>v.</i> Allan, 15 Ves. 135 .....	103
Allen <i>v.</i> Allen, 2 Dr. & War. 337 .....	59
Andrew, Re, 26 W. R. 811 .....	215
Armstrong, Re, 5 W. R. 448 .....	79
Arrowsmith, Re, 6 W. R. 742; 7 Jur., N. S. 1122 .....	115
Aston <i>v.</i> Aston, 1 Ves. sen. 265 .....	69, 258
Att.-Gen. <i>v.</i> Caius College, 2 Keen, 150 .....	81
— <i>v.</i> Christ Church (Oxford), 3 Giff. 514 .....	213
— <i>v.</i> Cooper's Co., 19 Ves. 192 .....	81
— <i>v.</i> Great Eastern Rail. Co., 11 Ch. D. 465; 27 W. R. 759; 48 L. J., Ch. 429; 40 L. T. 265 .....	43
— <i>v.</i> Lady Downing, Wilm. 23 .....	119
— <i>v.</i> Parsons, 2 Cro. & J. 279 .....	43
— <i>v.</i> Ward, 6 Hare, 477 .....	80

## B.

Bagot <i>v.</i> Bagot, 34 Beav. 509 .....	74
Balls <i>v.</i> Strutt, 1 Hare, 146 .....	87
Barker, Re, 1 Ch. D. 43; 24 W. R. 264; 45 L. J., Ch. 52 .....	80
Battersby, Re, 16 Jur. 900 .....	81, 82
Beioley <i>v.</i> Carter, L. R., 4 Ch. A. 230; 38 L. J., Ch. 283; 17 W. R. 300; 20 L. T., N. S. 381 .....	205, 220, 230
Bendyshe, Re, 3 Jur., N. S. 727 .....	238
Bennett <i>v.</i> Colley, 2 M. & K. 233; 5 Sim. 192 .....	87, 104
Berkley, Re, L. R., 9 Ch. A. 720; 31 L. T. 365 .....	81
Bevan <i>v.</i> Habgood, 1 J. & H. 222 .....	105
Bicknell, Re, L. R., 14 Eq. 467; 20 W. R. 937 .....	224
Birtle, Re, 11 W. R. 739 .....	205
Blanchard, Re, 3 De G. F. & J. 131; 7 Jur., N. S. 505 .....	81, 82, 104
Bolton Estates Act, Re, 19 W. R. 429 .....	227
Bowles' case, 11 Rep. 79b; Tud. L. C. Conv. 27 .....	68, 74
Bowmer, Re, 3 De G. & J. 658 .....	80
Boyce, Re, 12 W. R. 359 .....	80
Boyd, Re, W. N. 1876, p. 184 .....	92
Brackenbury, Re, L. R., 10 Eq. 45 .....	96

	PAGE
Bradley v. Peixoto, 3 Ves. 324; Tud. L. C. Conv. 858 .....	102
Brandon v. Robinson, 18 Ves. 429.....	102
Brealey, Re, 29 L. T. 208; 5 W. R. 613 .....	238
Brettnall, Re, W. N. 1872, p. 77.....	81
Brice v. Stokes, 11 Ves. 324; 2 Wh. & Tud. L. C. Eq. 725 ..	84
Bridge v. Brown, 2 Y. & C., Ch. Ca. 181 .....	61
Bridgman, Re, 1 Dr. & Sm. 164; 8 W. R. 598; 29 L. J., Ch. 844.....	80
Brigstocke v. Brigstocke, 8 Ch. D. 357; 47 L. J., Ch. 817; 38 L. T. 760 .....	24, 35
Broadwood, Re, 1 Ch. D. 438; 24 W. R. 108; 45 L. J., Ch. 168.....	226, 237, 238
Brown v. Higgs, 8 Ves. 574.....	119
Brumridge v. Brumridge, 27 Beav. 5 .....	84
Brydges v. Stephens, 6 Mad. 279 .....	74
Bubb v. Yelverton, L. R., 10 Eq. 465 .....	69
Buckridge v. Glasse, Cr. & Ph. 126 .....	80
Budge v. Gummow, L. R., 7 Ch. A. 719; 41 L. J., Ch. 520; 26 L. T. 683.....	86
Bunn, Ex parte, 24 Beav. 137.....	94
Burdin, Re, 28 L. J., Ch. 840; 7 W. R. 711; 2 L. T., N. S. 458; 5 Jur., N. S. 1378 .....	22, 206

## C.

Caddick, Re, 7 W. R. 334 .....	236
Caldecott v. Caldecott, 4 Mad. 189.....	52
Calvert v. Godfrey, 6 Beav. 97 .....	206
Camden, Marquis, v. Murray, 29 W. R. 190 .....	112
Campbell, Re, 31 Beav. 176.....	81
— v. Leach, Amb. 740 .....	37, 39
Carlyon v. Truscott, L. R., 20 Eq. 348; 23 W. R. 302; 44 L. J., Ch. 186; 32 L. T. 50.....	205
Carr, Re, 7 Jur., N. S. 1267; 9 W. R. 776.....	38
— v. Benson, L. R., 3 Ch. A. 524; 16 W. R. 744; 18 L. T. 696 .....	25
Carter v. Sebright, 26 Beav. 374 .....	96
Case v. Metropolitan Rail. Co., 27 Beav. 247.....	94
Chamberlain, Re, 23 W. R. 852.....	222
Chambers, Re, 28 Beav. 655; 29 L. J., Ch. 924; 8 W. R. 646; 6 Jur., N. S. 1005; 3 L. T., N. S. 49 .....	209, 210, 213
Chandos, Duke of, v. Talbot, 2 P. Wms. 606 .....	74
Chatham v. Wilkinson, 4 East, 469 .....	25
Chauncey, Re, 14 W. R. 849 .....	80
Cheshunt Coll., Re, 3 W. R. 6, 38.....	54
Cholmeley v. Paxton, 3 Bing. 207; 5 Bing. 48 .....	75
Cholmondeley, Re Marquis of .....	220
Clegg v. Rowland, L. R., 2 Eq. 160; 14 W. R. 530; 35 L. J., Ch. 396; 14 L. T. 217 .....	39
Clitheroe, Re, 17 W. R. 345 .....	226
Clough, Re, L. R., 15 Eq. 284; 21 W. R. 452; 42 L. J., Ch. 293; 28 L. T. 261.....	236
— v. Bond, 3 M. & Cr. 496 .....	52
Cockburn v. Peel, 3 De G. F. & J. 170 .....	56

	PAGE
Cockerell v. Cholmeley, 10 B. & Cr. 564; 3 Russ. 565; 1 Russ. & My. 418; 1 Cl. & F. 60.....	75
Collette v. Collette, L. R., 2 Eq. 203; 14 W. R. 446; 12 Jur., N. S. 180 .....	204, 206
Cooke v. Cholmondeley, 3 Dr. 1.....	24
Cooper, Re, 20 Ch. D. 611 .....	220
Corbet's case, 1 Rep. 83 .....	102
Cowley, Earl, v. Wellesley, L. R., 1 Eq. 656; 35 Beav. 635 ..	24, 33, 71, 74
Coxe v. Day, 13 East, 118.....	34
Crabtree, Re, 14 W. R. 497; L. R., 10 Ch. A. 201 .....	96, 222
Cross' Charity, Re, 27 Beav. 592 .....	38, 209, 213
Crosskill v. Bower, 32 Beav. 86 .....	86
Cust v. Middleton, 3 De G. F. & J. 33.....	48, 207, 209, 210

## D.

D'Adhemar, Viscountess, v. Bertrand, 35 Beav. 19 .....	82
Daly v. Beckett, 24 Beav. 114 .....	39
Dance v. Goldingham, L. R., 8 Ch. A. 902; 21 W. R. 761; 42 L. J., Ch. 777; 29 L. T. 166.....	30, 104
Darke v. Martin, 1 Beav. 525 .....	85
Darnley, Lord, v. Fitzhardinge, 6 Ves. 251.....	103
Davis, Re, L. R., 12 Eq. 214; 19 W. R. 944; 40 L. J., Ch. 566 .....	78, 81
— v. Angel, 31 Beav. 223; 8 Jur., N. S. 709; 4 De G. F. & J. 423.....	103
— v. Duke of Marlborough, 1 Sw. 74; 2 Sw. 108 .....	110
Dawson, Re, 3 N. R. 397 .....	80
Dayrell v. Champneys, 1 Eq. Ca. Abr. 400.....	104
De la Warr, Earl, Re, 16 Ch. D. 587 .....	76
Dendy, Re, 4 Ch. D. 879; 46 L. J., Ch. 417; 25 W. R. 410. 220, 221	
Dent v. Dent, 30 Beav. 263 .....	61, 64
D'Eyncourt v. Gregory, 3 Ch. D. 635 .....	206
De Tabley, Re Lord, 11 W. R. 936 .....	237
De Visme v. De Visme, 1 M. & G. 336.....	56
Dicconson v. Talbot, L. R., 6 Ch. A. 32 .....	105
Dickenson, Re, 1 Jur., N. S. 724 .....	82
Dickson v. Graham, 25 L. J., Ch. 588.....	54
Dix v. Burford, 19 Beav. 409 .....	84
Dodkin v. Brunt, L. R., 5 Eq. 580.....	78
Doe v. Bousfield, 6 Q. B. 492; 14 L. J., Q. B. 42; 8 Jur. 1121; 1 C. & K. 558 .....	42
— v. Radcliffe, 10 East, 278.....	33
Downshire, Marquis of, v. Lady Sandys, 6 Ves. 107 .....	69, 104
Doyle v. Campbell, I. R., 9 C. L. 95 .....	43
Drake v. Trefusis, L. R., 10 Ch. A. 367; 23 W. R. 762; 33 L. T. 85.....	61, 67, 226
Draper, Re, 2 W. R. 440 .....	82
Drosier v. Brereton, 15 Beav. 221 .....	84, 85
Dryden, Re, 50 L. J., Ch. 752.....	214

## E.

East, Re, L. R., 8 Ch. 735; 42 L. J., Ch. 480 .....	80
Edwards, Re, 10 Ch. D. 605; 27 W. R. 611; 48 L. J., Ch. 233; 40 L. T. 119.....	115

	PAGE
<i>Elias v. Snowdon Slate Co.</i> , 4 App. Cas. 454; 28 W. R. 54; 48 L. J., Ch. 811; 41 L. T. 289 .....	68
<i>Ellison</i> , Re, 2 Jur., N. S. 62 .....	82
<i>Eyre</i> , Re, 4 K. & J. 268; 31 L. J., Ch. 79 .....	218
— <i>v. Saunders</i> , 5 Jur., N. S. 704; 7 W. R. 366; 28 L. J., Ch. 439; 4 Jur., N. S. 830; 31 L. T. 39 .....	206, 218

## F.

<i>Farrant v. Lovell</i> , 3 Atk. 723 .....	104
<i>Fellows</i> , Re, 2 Jur., N. S. 62 .....	82
<i>Feoffees of Heriots Hospital</i> , Re, 12 Cl. & F. 512 .....	87
<i>Finlay v. Howard</i> , 2 Dr. & W. 490 .....	104
<i>Fletcher v. Ashburner</i> , 1 B. C. C. 499 .....	205
— <i>v. Fletcher</i> , 4 Hare, 78 .....	87, 104
— <i>v. Green</i> , 33 Beav. 426 .....	86
<i>Floyer v. Bankes</i> , L. R., 8 Eq. 115 .....	67
<i>Foley v. Burnell</i> , 1 Bro. C. C. 274 .....	59
<i>Ford</i> , Re, L. R., 8 Eq. 309 .....	33, 209
— <i>v. Tynte</i> , 2 De G. J. & S. 127 .....	69
<i>Forster v. Abraham</i> , L. R., 17 Eq. 351; 22 W. R. 386; 43 L. J., Ch. 199 .....	81
<i>Foster v. Davis</i> , 10 W. R. 180 .....	81
— <i>v. Foster</i> , 1 Ch. D. 588; 24 W. R. 185; 45 L. J., Ch. 301 .....	227
— <i>v. Lennard</i> , Cro. Eliz. 1 .....	74
<i>Fox v. Buckley</i> , 3 Ch. D. 508; 25 W. R. 170 .....	104
<i>Francis v. Francis</i> , 5 De G. M. & G. 108 .....	86
<i>Franklin</i> , Re, 7 W. R. 45 .....	222
<i>Fryer</i> , Re, 3 K. & J. 317 .....	84
— <i>v. Coombs</i> , 11 Ad. & El. 403 .....	34

## G.

<i>Garth v. Cotton</i> , 1 Wh. & Tud. L. C. Eq. 817; 1 Ves. 524; 1 Dick. 183 .....	69
<i>Gartside</i> , Re, 1 W. R. 196 .....	80
<i>Garty</i> , Re, 3 N. R. 636 .....	78, 81
<i>Gibbon</i> , Re, 30 W. R. 287; 45 L. T. 756 .....	78
<i>Golding v. Wharton Rail. Co.</i> , 1 Q. B. D. 374; 24 W. R. 423; 34 L. T. 474 .....	95
<i>Goodwin</i> , Re, 3 Giff. 620 .....	206
<i>Graham</i> , Re, 13 W. R. 782 .....	115
<i>Green</i> , Re, 10 Jur., N. S. 1098 .....	213
— <i>v. Angell</i> , W. N. 1867, p. 305 .....	53
<i>Grey v. Jenkins</i> , 26 Beav. 355 .....	218, 219
<i>Grover v. Hugell</i> , 3 Russ. 428 .....	105
<i>Grundey v. Buckridge</i> , 22 L. J., Ch. 1007 .....	81

## H.

<i>Halliday</i> , Re, L. R., 12 Eq. 199; 19 W. R. 966; 40 L. J., Ch. 687 .....	237
<i>Halliley v. Henderson</i> , 4 Jur., N. S. 202 .....	94
<i>Hanbury v. Kirkland</i> , 3 Sim. 265 .....	84
— <i>v. Litchfield</i> , 2 My. & K. 629 .....	42



## TABLE OF CASES.

xxix

	PAGE
Hanover, King of, <i>v.</i> Bank of England, L. R., 8 Eq. 350	78
Hargrave, Re, 15 W. R. 54	216
Harle, Re, 2 H. & M. 196, 202; 11 Jur., N. S. 78; 13 W. R. 171; 11 L. T., N. S. 592	45, 229
Harrington <i>v.</i> Harrington, L. R., 5 H. L. 87	77, 238
Harrison, Re, 22 L. J., Ch. 60	80, 81
Hartley, Re, 2 De G. & Sm. 67	78
Harvey, Re, 30 W. R. 697; W. N. 1882, p. 875	214
Hasluck <i>v.</i> Pedley, L. R., 19 Eq. 271; 23 W. R. 551	259
Haywood <i>v.</i> Brunswick, &c. Building Society, 8 Q. B. D. 403; 30 W. R. 299; 51 L. J., Q. B. 73; 45 L. T. 699	39
Heddy <i>v.</i> Wheelhouse, Cro. Eliz. 558	24
Hemsley, Re, L. R., 16 Eq. 315; 43 L. J., Ch. 72; 21 W. R. 821; 29 L. T., N. S. 173	224
Herbert <i>v.</i> Herbert, 1 Deane, 6; 1 Jur., N. S. 1177	26
Hilton, Re, W. N. 1866, p. 107	105, 215
Hindle <i>v.</i> Taylor, 5 De G. M. & G. 577	59, 289
Hoare, Re, 30 W. R. 177	227
Hodson, Re, 9 Hare, 118	78
Hogg <i>v.</i> Jones, 32 Beav. 45	77
Hole, Re, W. N. 1868, p. 70	218
Holland <i>v.</i> Hughes, 16 Ves. 114	52
Honeywood <i>v.</i> Foster, 9 W. R. 855	355
— <i>v.</i> Honeywood, L. R., 18 Eq. 306	74
Howard <i>v.</i> Ducane, Turn. & Russ. 81	105, 119
Howard's case, Cro. Car. 59	43
Hume <i>v.</i> Richardson, 4 De G. F. & J. 32	57
Hutchinson, Re, 12 Jur., N. S. 245; 14 W. R. 473; 14 L. T., N. S. 129	211, 213

## I.

Ives, Re, 3 Ch. D. 690; 24 W. R. 1068	219, 220
---------------------------------------	----------

## J.

Jacobs <i>v.</i> Rylance, L. R., 17 Eq. 341	104
James, Re, L. R., 5 Eq. 334	112, 236
Jegon <i>v.</i> Vivian, L. R., 6 Ch. A. 742	25
Jerdein <i>v.</i> Bright, 30 Beav. 332	104
Jersey, Re Earl of, 9 W. R. 609	213
Jodrell <i>v.</i> Jodrell, L. R., 7 Eq. 461; 17 W. R. 602; 38 L. J., Ch. 507; 20 L. T. 349	74

## K.

Kilmorey, Re Lord, 26 W. R. 54	224
--------------------------------	-----

## L.

Laing, Re, L. R., 1 Eq. 417; 35 L. J., Ch. 282; 14 W. R. 328; 14 L. T., N. S. 56	204
Lake <i>v.</i> De Lambert, 4 Ves. 492	80

	PAGE
Law, Re, 7 Jur., N. S. 507 .....	215, 216
Leadbitter, Re, 10 Ch. D. 388; 27 W. R. 267; 48 L. J., Ch. 242; 39 L. T. 286 .....	64
Legge, Re, 6 W. R. 20 .....	222, 223
Leigh, Re, L. R., 6 Ch. A. 887; 24 W. R. 1105 .....	67
— v. Barry, 3 Atk. 582 .....	84
Letchford, Re, 2 Ch. D. 719 .....	111
Lewis, Re, 24 W. R. 103 .....	222
— v. Fothergill, 5 Ch. A. 111 .....	25
Liddiard, Re, 14 Ch. D. 310; 28 W. R. 574; 49 L. J., Ch. 373; 42 L. T. 621 .....	81
Lincoln v. Wright, 4 Beav. 427 .....	85
Lindo v. Lindo, 1 Beav. 496 .....	360
Lister v. Bell, 5 Jur., N. S. 115 .....	94
Lockhart v. Reilly, 1 De G. & J. 476 .....	85
London and County Assurance Society, Re, 5 W. R. 794 .....	94
London and S. W. Rail. Co., Directors of, v. Blackmore, L. R., 4 H. L. 610 .....	360
Lovat, Lord, v. Duchess of Leeds, 11 L. T., N. S. 442; 2 Dr. & Sm. 75 .....	74
Lowndes v. Norton, 6 Ch. D. 139; 25 W. R. 826; 46 L. J., Ch. 613 .....	74

## M.

Machel v. Clark, 2 Ld. Raym. 779 .....	111
Macleod v. Annesley, 16 Beav. 600 .....	86
Mallin, Re, 3 Giff. 126; 30 L. J., Ch. 929; 4 L. T., N. S. 435 .....	216
Marlborough, Duke of, v. St. John, 5 De G. & Sm. 181 .....	67
Marshall, Re, L. R., 15 Eq. 66; 27 L. J., Ch. 439 .....	224
Martelli v. Holloway, L. R., 5 H. L. 582 .....	77
Massy v. Rowan, L. R., 4 H. L. 294 .....	113
Matthews, Re, 26 Beav. 463 .....	80
Meinertzen v. Davis, 1 Coll. 335; 13 L. J., Ch. 457; 8 Jur. 973 .....	81
Merry, Re, 15 W. R. 307 .....	219, 227
Mildmay v. Quicke, 6 Ch. D. 553 .....	227
Millard v. Eyre, 2 Ves. jun. 94 .....	79
Miller v. Miller, L. R., 13 Eq. 263 .....	39
Milward, Re, L. R., 6 Eq. 248 .....	29, 46, 215, 216
Mitchell, Re, 12 W. R. 39 .....	94
Moravian Society, Re, 26 Beav. 101 .....	79
Mordaunt v. Benwell, 19 Ch. D. 302 .....	227
Morgan, Re, L. R., 9 Eq. 587; 18 W. R. 516; 49 L. J., Ch. 577 .....	205, 218, 227
Morris v. Morris, 15 Sim. 505 .....	104
— v. Rhydydefed Colliery Co., 7 W. R. 95; 5 Jur., N. S. 339 .....	37
Moskett, Re, Johns. 628 .....	107
Moyle v. Moyle, 2 R. & M. 716 .....	52, 84, 85
Muggridge, Re, Johns. 625 .....	107
Murphy, Re, 4 Man. & Gr. 635 .....	115
Murr v. Cooke, 24 W. R. 756 .....	95

## N.

Nairn v. Marjoribanks, 3 Russ. 582 .....	61
Newman, Re, L. R., 9 Ch. A. 681; 43 L. J., Ch. 702 .....	61, 226

# TABLE OF CASES.

xxxi

	PAGE
Noel v. Weston, 6 Mad. 50 .....	49
Norris v. Wright, 14 Beav. 307 .....	85, 86
Noyes, Re, 6 W. R. 7 .....	238

## O.

Ogle, Ex parte, L. R., 8 Ch. A. 711 .....	76
---	----

## P.

Parby, Re, 29 L. T. 72 .....	96
Parke, Re, 21 L. T. 218 .....	82
Parker, Re, 32 Beav. 580; 28 L. J., Ch. 91; 2 S. & T. 375 .....	26, 80
Parrott, Re, 30 W. R. 97 .....	81
Parry's Will, Re, 34 Beav. 462 .....	222, 223
Passingham v. Sherborne, 9 Beav. 424 .....	81
Peacock, Re, 15 W. R. 100; 12 Jur., N. S. 959; 16 L. T., N. S. 266 .....	215, 227
—— v. Monk, 2 Ves. sen. 190 .....	258
Pells v. Brown, Cro. Jac. 590 .....	110
Pepper v. Tuckey, 2 Jo. & Lat. 95 .....	79
Phelps, Ex parte, 9 Mod. Rep. 357 .....	79
Phillipps v. Smith, 14 M. & W. 589 .....	75
Piggott v. Bullock, 1 Ves. jun. 479 .....	74
Porter, Re, 2 Jur., N. S. 349 .....	80, 82
Portsmouth, Earl of, v. Fellowes, 5 Madd. 450 .....	80
Pott, Re, L. R., 16 Eq. 631, n.; 15 W. R. 29 .....	220
Poynder v. Cook, 50 L. J., Ch. 753 .....	64, 216
Pye, Re, 42 L. T. 247 .....	79

## R.

Rawlins, Re, L. R., 1 Eq. 287; 13 L. T., N. S. 626 .....	41, 209, 210
Rede v. Oakes, 4 D. J. & S. 505; 10 Jur., N. S. 1246 .....	104
Rehden v. Wealey, 29 Beav. 213 .....	85
Renault, Re, 16 Jur. 233 .....	82
Reveley, Re, 11 W. R. 774 .....	37, 209, 216
Reynolds, Ex parte, 5 Ves. 707 .....	79
——, Re, 3 Ch. D. 61; 24 W. R. 991 .....	226
Richards, Re, 5 De G. & Sm. 636 .....	82
Rigg, Re, 10 W. R. 365 .....	94
Rivers, Re Lord, 16 Ch. D. 589 .....	76
Roberts, Re, 9 W. R. 758 .....	82
—— v. Roberts, 2 De G. & S. 29; 2 Phil. 534; 12 Jur. 148 .....	103
Rochford v. Hackman, 9 Hare, 475 .....	102
Roper, Re, 2 N. B. 442 .....	215
Row, Re, L. R., 17 Eq. 300; 43 L. J., Ch. 347; 29 L. T. 824 .....	226
Ruthley v. Gill, 3 Dr. & Sm. 640 .....	56
Rylar, Re, 24 W. R. 949 .....	222

## S.

Salisbury, Marquis of, Re, L. R., 2 Ch. D. 29; 24 W. R. 380; 45 L. J., Ch. 250; 34 L. T. 5 .....	28
Savage, Re, L. R., 2 P. & M. 78 .....	26

	PAGE
Savile v. Bruce, 29 Beav. 559 .....	207
Scarsdale, Lord, v. Curzon, 1 J. & H. 66 .....	77
Scarsfield v. Howes, 3 B. C. C. 95 .....	84
Seymour's case, 10 Rep. 95 .....	111
Sharpley, Re, 1 W. R. 271 .....	82
Shelmerdine, Re, 33 L. J., Ch. 474 .....	80
Shepherd, Re, L. R., 8 Eq. 573; 39 L. J., Ch. 173; 21 L. T., N. S. 525 .....	205, 230
Shepperd, Re, 4 De G. F. & J. 423; 1 N. R. 76 .....	103
Shrewsbury v. Scott, 6 C. B., N. S. 221 .....	225
Simpson v. Bathurst, L. R., 5 Ch. D. 193 .....	33
—— v. Denny, 10 Ch. D. 28 .....	220
Skingley, Re, 3 Mac. & G. 221 .....	68
Snell, Re, 19 W. R. 1000 .....	224
Soulby, Re, 21 W. R. 256 .....	78
Sparrow, Re, L. R., 5 Ch. A. 662 .....	80
Speer, Re, 3 Ch. D. 262 .....	226
Speight, Re, W. N. 1882, p. 93 .....	85
Spurway, Re, 10 Ch. D. 230; 27 W. R. 302 .....	71, 103, 220
Standish, Re, 25 W. R. 8 .....	237
Stare v. Gage, 8 Ch. D. 451 .....	220
Stickney v. Sewell, 1 M. & Cr. 8 .....	86
Strutt, Re, L. R., 16 Eq. 629; 33 L. T., N. S. 498; 43 L. J., Ch. 69; 21 W. R. 880 .....	220
Sturgis v. Morse, 2 De G. F. & J. 231 .....	111
Swaffield v. Nelson, W. N. 1876, p. 255 .....	85

## T.

Taddy, Re, L. R., 14 Eq. 31 .....	228
Tankerville, Lord, v. Wingfield, 2 Brod. & Bing. 498 .....	34
Taylor, Re, L. R., 14 Eq. 557; 42 L. J., Ch. 504; 27 L. T., N. S. 335 .....	205, 219, 227, 235
—— v. Horde, 1 Burr. 121 .....	33
—— v. Taylor, 20 Eq. 297; 23 W. R. 947; 33 L. T. 89; S. C. on app., 3 Ch. D. 147 .....	218
Tempest, Re, L. R., 1 Ch. A. 485 .....	81
Thomas, Re, 30 W. R. 244 .....	84
Thompson, Re, Johns. 418; 5 Jur., N. S. 1343 .....	218, 230
—— v. Finch, 22 Beav. 316 .....	85
Thorne, Re, 20 W. R. 587; 26 L. T., N. S. 682 .....	237
Thornhill v. Milbank, 12 W. R. 523; 10 L. T., N. S. 124 .....	226
Thorold, Re, L. R., 16 Eq. 532 .....	228
Ticknor v. Old, L. R., 18 Eq. 422 .....	86
Tolson v. Sheard, 5 Ch. D. 19 .....	31, 213
Townley v. Sherborne, Bridg. 35 .....	84
Townsend, Re, L. R., 14 Eq. 433 .....	219
Tracey v. Tracey, 1 Vern. 23 .....	104
Travis v. Illingworth, 2 Dr. & Sm. 344; 13 W. R. 489; 34 L. J., Ch. 665; 12 L. T. 135; 11 Jur., N. S. 215 .....	80
Truscott v. Diamond, &c. Co., 20 Ch. D. 251; 30 W. R. 277 .....	36
Trye v. Corp. of Gloucester, 14 Beav. 173 .....	45
Turner, Re, 3 C. B. 166 .....	115
—— v. Maule, 15 Jur. 761 .....	79
Tyler, Re, 5 De G. & Sm. 56 .....	78

## TABLE OF CASES.

xxxiii

## V.

	PAGE
Vane <i>v.</i> Lord Barnard, 2 Vern. 738; Pr. Ch. 454; 1 Eq. Ca. 399; 1 Salk. 161 .....	69
Venables <i>v.</i> Schweitzer, L. R., 16 Eq. 76 .....	94
Venner, Re, L. R., 6 Eq. 249; 16 W. R. 1033 .....	236
Venour, Re, 2 Ch. D. 525; 45 L. J., Ch. 409; 24 W. R. 752..	226
Vickers, Re, W. N. 1876, p. 178 .....	80

## W.

Waldo <i>v.</i> Waldo, 7 Sim. 107 .....	74
Wallace, Re, W. N. 1869, p. 67 .....	209, 213
Ward, Re, 14 W. R. 96; 2 J. & H. 191 .....	52, 107
Ware <i>v.</i> Cann, 10 B. & C. 433 .....	102
Waring <i>v.</i> Waring, I. R., 3 Ch. 377 .....	85
Watts, Re, 9 Hare, 106; 20 L. J., Ch. 337; 15 Jur. 459 ..	79, 80
Webb <i>v.</i> Earl of Shaftesbury, 7 Ves. 487 .....	104
Wedderburn, Re, 9 Ch. D. 112 .....	53
Wheldale <i>v.</i> Partridge, 5 Ves. 396 .....	205
Whiteley, Re, L. R., 8 Eq. 574 .....	224
Wiles <i>v.</i> Gresham, 5 De G. M. & G. 770 .....	76
Wilkinson, Re, 21 W. R. 537; L. R., 9 Eq. 71; 21 L. T., N. S. 482 .....	218
——— <i>v.</i> Hogg, 10 W. R. 47 .....	84
Willan, Re, 45 L. T. 745 .....	76
Williams, Re, W. N. 1878, p. 189; 4 K. & J. 87 .....	218, 229
——— <i>v.</i> Williams, 12 East, 209 .....	111
——— <i>v.</i> Williams, 9 W. R. 888 .....	111
Willis <i>v.</i> Hiscox, 4 M. & Cr. 197; Tud. L. C. Conv. 858 ....	102
Willock <i>v.</i> Noble, L. R., 7 H. L. 580; 23 W. R. 809; 44 L. J., Ch. 345; 32 L. T. 410 .....	26
Wilson, Re, 1 L. T., N. S. 25 .....	225
Wood, Re, L. R., 20 Eq. 372 .....	226
——— <i>v.</i> Gaynon, Amb. 395 .....	68
Woodcock, Re, L. R., 13 Eq. 183 .....	228, 236
Woodgate, Re, 5 W. R. 448 .....	79, 80
Woodhouse <i>v.</i> Walker, 5 Q. B. D. 404 .....	67, 68

## Z.

Zouche, Lord, <i>v.</i> Dalbiac, L. R., 10 Ex. 172; 23 W. R. 564; 44 L. J., Ex. 109 .....	24
--	----

# TABLE OF STATUTES.

	PAGE
23 Hen. 8, c. 5 (Sewers) .....	152
34 & 35 Hen. 8, c. 20 (Fines and Recoveries) .....	110
2 & 3 Ph. & M. c. 17 (Private) .....	110
12 Chas. 2, c. 24 (Abolition of Feudal Tenures) .....	26
5 Anne, c. 13 (Private) .....	110
7 Anne, c. 10 (Sewers) .....	152
39 & 40 Geo. 3, c. 98 (Thellusson Act) .....	119
41 Geo. 3, c. 59, s. 6 (Annuities, &c.) .....	110
42 Geo. 3, c. 113, s. 6 (Annuities, &c.) .....	110
54 Geo. 3, c. 161, s. 28 (Annuities, &c.) .....	110
11 Geo. 4 & 1 Will. 4, c. 60 (Transfer of Estates vested in Trustees) .....	79
3 & 4 Will. 4, c. 22 (Sewers) .....	152
c. 27 (Statute of Limitations) .....	24, 104
c. 74 (Fines and Recoveries) .....	110, 111, 115
s. 18 .....	110
s. 34 .....	111
s. 41 .....	352
s. 50 .....	355
s. 91 .....	114, 115
6 & 7 Will. 4, c. 71 (Tithes Commutation) .....	98
1 Vict. c. 26, s. 12 (Wills) .....	26
4 & 5 Vict. c. 35 (Copyholds) .....	25, 98
c. 38, s. 2 (School Sites) .....	28
c. 45 (Sewers) .....	152
8 Vict. c. 18 (Lands Clauses Consolidation) .....	72
s. 69 .....	72, 84
8 & 9 Vict. c. 106 (Amendment of Law of Real Property) .....	32
c. 118 (Inclosures) .....	99
9 & 10 Vict. c. 101 (Drainage Loans) .....	125
10 Vict. c. 17 (Waterworks Clauses Consolidation) .....	155
10 & 11 Vict. c. 38 (Land Drainage) .....	144
c. 96 (Trustee Relief) .....	79
c. 113 (Land Drainage, Scotland) .....	144
12 & 13 Vict. c. 49, s. 3 (School Sites) .....	28
c. 50 (Sewers) .....	152
13 & 14 Vict. c. 35, s. 29 (Court of Chancery) .....	93
c. 60, s. 32 (Trustee Act, 1850) .....	78
14 & 15 Vict. c. 24 (School Sites) .....	28
c. 53 (Copyholds) .....	42
c. 55 (Inclosures) .....	99
15 & 16 Vict. c. 55, s. 29 (Trustee Extension Act, 1852) .....	78
c. 80, ss. 29, 31 (Court of Chancery) .....	93, 94
16 & 17 Vict. c. 70 (Lunacy Regulation) .....	80
18 & 19 Vict. c. 13, s. 1 (Lunacy) .....	115
c. 120 (Metropolitan Management) .....	154

## TABLE OF STATUTES.

XXXV

	PAGE
19 & 20 Vict. c. 120 ( <i>Leases and Sales of Settled Estates, repealed</i> )	29, 45, 49, 204, 229, 235, 238
20 & 21 Vict. c. cxlvii. ( <i>Thames Conservancy</i> )	152
21 & 22 Vict. c. 77 ( <i>Leases and Sales of Settled Estates, repealed</i> )	206
c. 94 ( <i>Copyholds</i> )	42
22 & 23 Vict. c. 35 ( <i>Lord St. Leonards'</i> )	52, 75, 83, 84
s. 13	75
s. 23	83
s. 30	107
s. 31	84
s. 32	51
s. 53	107
23 & 24 Vict. c. 38, s. 9 ( <i>Lord St. Leonards'</i> )	52, 103
s. 11	52
c. 108 ( <i>Confirmation of Sales</i> )	210
c. 145 ( <i>Lord Cranworth's, repealed</i> )	59, 79, 83, 119, 120
s. 1	119
s. 4	59
s. 27	79
s. 29	83
25 & 26 Vict. c. 53 ( <i>Land Transfer</i> )	215
c. 108, s. 2 ( <i>Confirmation of Sales</i> )	215
26 & 27 Vict. c. 93 ( <i>Waterworks Clauses</i> )	155
27 & 28 Vict. c. 45 ( <i>Settled Estates, repealed</i> )	206, 209
c. 113 ( <i>Thames Conservancy</i> )	152
28 & 29 Vict. c. 104, s. 48 ( <i>Crown Suits</i> )	130
29 & 30 Vict. c. 89 ( <i>Thames Navigation</i> )	152
30 & 31 Vict. c. 132 ( <i>Trustee</i> )	53
31 & 32 Vict. c. 89 ( <i>Inclosure, Expenses</i> )	99, 182
33 & 34 Vict. c. 56 ( <i>Limited Owners Residences</i> )	64
34 & 35 Vict. c. 47, s. 13 ( <i>Trustees Investment</i> )	53
c. 84 ( <i>Limited Owner Residences</i> )	64, 128
35 & 36 Vict. c. 44, s. 3 ( <i>Court of Chancery (Funds) Act</i> )	26
36 & 37 Vict. c. 50, s. 1 ( <i>Places of Worship Sites Amendment Act</i> )	28
c. 66 ( <i>Judicature Act, 1873</i> )	91, 94, 95
s. 33	91
s. 49	94
s. 50	95
37 & 38 Vict. c. 33 ( <i>Settled Estates, repealed</i> )	221
39 & 40 Vict. c. 30 ( <i>Settled Estates, repealed</i> )	217
40 & 41 Vict. c. 31 ( <i>Reservoirs Act</i> )	62, 65
c. 57 ( <i>Judicature, Ireland</i> )	121, 207, 234
s. 4	234
s. 36	207, 234
s. 69	122
42 & 43 Vict. c. 78, s. 29 ( <i>Judicature, Officers</i> )	231
43 & 44 Vict. c. i. ( <i>Blenheim Estates</i> )	77
44 & 45 Vict. c. 41 ( <i>Conveyancing, &amp;c.</i> )	46, 49, 53, 54, 78, 82, 83, 100, 111, 114, 122, 123, 206
s. 2	46, 49, 53
s. 5	101
s. 7	271
s. 18	100
s. 30	302

	PAGE
44 & 45 Vict. c. 41, s. 31 .....	78, 82, 358
s. 36 .....	83
s. 39 .....	114
s. 41 .....	111, 206
s. 45 .....	54
s. 52 .....	100
s. 65 .....	54
c. 49 (Land Law, Ireland) .....	122, 123
45 & 46 Vict. c. 21 (Places of Worship Sites Amendment Act) ..	28
c. 39, s. 3 (Conveyancing) .....	90
c. 75 (Married Women's Property) ....	81, 113, 114
s. 2 .....	113
s. 5 .....	114
s. 18 .....	81
s. 19 .....	114



# Settled Land Statutes.

---

## Part I.

---

### CHAPTER I.

GENERAL EFFECT OF THE SETTLED LAND ACT, 1882,  
THE IMPROVEMENT OF LAND ACT, 1864, AND THE  
SETTLED ESTATES ACT, 1877.

THE objects of the Settled Land Act, 1882, are, as indicated by its title, to facilitate sales, leases and other dispositions of settled land, and to promote the execution of improvements thereon.

Objects of  
the Settled  
Land Act,  
1882.

The memorandum presented to Parliament along with the bill stated, that "the main object of this bill is to enable a tenant for life (which term is used to include generally the class of limited owners) to dispose by sale, lease or otherwise, of any part of the settled land, or even of the whole of it, proper provision being made for securing the purchase-money on a sale, and otherwise for protecting the interests of the remaindermen, and of others entitled to come in under a settlement."

The Act is to come into operation after the 31st December, 1882, and does not extend to Scotland (sect. 1).

Com-  
mencement  
and ap-  
plication.

In sect. 2, the word "settlement" is defined as any deed, will, agreement for settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument or any number of instruments, whether made or passed before or after, or partly before and partly after,

Defini-  
tions.

the commencement of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession. An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descended to the testator's heir, is an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of settlement. And by sect. 63, the operation of the Act is extended to settlements by way of trust or direction for sale of land. The term "tenant for life," includes not only the person beneficially entitled to possession of settled land for his life (sect. 2), but also a tenant in tail, tenant by the curtesy, and other limited owners (sect. 58): also an infant tenant in fee simple (sect. 59). The powers of a tenant for life under this Act are exerciseable on behalf of the infant by the trustees, and, if there are none, by the Court on the application of a special guardian or next friend (sect. 60).

The powers of a tenant for life are exerciseable by a married woman, whether an infant or not, if she is entitled for her separate use, otherwise by her and her husband together, and on behalf of a lunatic by his committee, under an order of the Lord Chancellor. A restraint on anticipation does not prevent exercise by a married woman of her powers (sects. 61, 62).

Sect. 2 gives also definitions of trustees, land, rent, and other terms used in the Act.

Analysis of  
provisions  
of the Act.

It may be convenient to consider the provisions of this Act under the following heads:—I. Powers

given to the tenant for life; II. Provisions for regulating the exercise of those powers, and protecting the trust property from a misuse of those powers; III. Provisions with regard to the execution of improvements; and IV. Supplemental provisions.

I. A tenant for life has under this Act the following powers, exerciseable without the intervention of the trustees of the settlement or of the Court:—

Powers of  
tenant for  
life.

- (1) He may sell the whole or part of the settled land (except the mansion-house and demesne lands), or any easements, rights or privileges belonging to it. He may sell seignories, &c., with or without mines or minerals, so as to effect enfranchisements, and he may make exchanges or partition of settled land (sect. 3):
- (2) A tenant for life may grant leases of the settled land (except the mansion-house, park, &c.), *i.e.*, building leases for ninety-nine years, mining leases for sixty years: other leases for twenty-one years (sect. 6); this power extends to leases granted for giving effect to contracts entered into by predecessors in title, or to covenants for renewal, and for confirming a previous lease being void or voidable (sect. 12):
- (3) A tenant for life may accept, with or without consideration, surrenders of leases in respect of the whole or any part of the land, with or without exceptions of mines and minerals, and grant new leases (sect. 13):
- (4) He may grant to copyholders licences for leasing (sect. 14):

- (5) On a sale, grant or lease for building purposes, he may cause streets, gardens, &c., with sewers, drains, &c., to be laid out and appropriated (sect. 16) :
- (6) He may raise money by mortgage of the settled moneys for enfranchisements, or for equality of exchange or partition (sect. 18) :
- (7) He may, where the settled land comprises an undivided share of land, concur in the exercise of powers under this Act with the owner of another undivided share (sect. 19) :
- (8) A tenant for life may by deed convey lands, or create rights or easements, sold or given in exchange, or on partition, lease or mortgage (sect. 20) :
- (9) A tenant for life may enter into, vary or rescind contracts for sale, exchange, partition, lease, mortgage or charge, and for other purposes of the Act, and accept surrenders of contracts and make new contracts (sect. 31) :

A tenant for life may, on obtaining the consent of the trustees of the settlement, or an order of the Court, do the following acts :—

- (1) He may sell or lease the mansion-house and demesnes of the settled land (sect. 15) :
- (2) He may, though impeachable for waste, cut and sell timber growing on the property (sect. 35).

A tenant for life, on obtaining an order of the Court, may—

- (1) Grant leases for longer than the statutory terms, or fee farm grants in perpetuity for

building and mining purposes (sect. 10):  
and may

- (2) Sell chattels settled to go as heirlooms with the settled land (sect. 37).

II. The following are the principal provisions for regulating the exercise by a tenant for life of his powers and for protection of the inheritance:—

Regulating provisions.

- (1) A sale must be at the best price, and an exchange or partition must be for the best consideration in land, or in land and money; a sale may be in one or several lots, by auction or private contract, and a tenant for life may reserve biddings and buy in: a sale, exchange or partition may be subject to special stipulation and restrictions or reservations, with respect to building, minerals or otherwise; an enfranchisement may be made with or without a re-grant of any rights, easements or privileges. Land in England may not be exchanged for land out of England (sect. 4):

Incumbrances affecting land sold may be transferred to other parts of the several lands with the consent of the incumbrancer (sect. 5):

- (2) Leases must be by deed and take effect not later than twelve months after date, and reserve the best rent, regard being had to any fine taken, and must contain a covenant for payment of rent and condition of re-entry on default; a counterpart is required to be executed by the lessee (sect. 7):

A building lease may be made at a peppercorn rent for the first five years of

the term. Where land is leased in lots the rent may be apportioned, save that the rent reserved by any lease shall not be less than 10s. The total rents reserved shall not be less than the total amount, which, according to this Act, ought to be reserved in respect of the whole land leased, and the rent reserved shall not exceed one-fifth part of the full annual value of the land comprised in any lease, with the buildings when completed (sect. 8) :

In a mining lease the rent may vary according to acreage worked or quantity of minerals gotten. A minimum rent may be made payable with power for the lessee in case of a deficiency at any period to make it up in any subsequent period, and the lease may be made partly in consideration of the execution by the lessee of an "improvement" on the settled land or other land (sect. 9) :

- (3) On the surrender of part only of land leased the rent may be apportioned; new leases may comprise additional lands, mines, &c. ; and the value of the lessee's interest on the surrender of a lease may be taken into account (sect. 13) :
- (4) Licences to copyholders may fix the assessments of customary payments, and are to be entered on the court rolls (sect. 14) :
- (5) Streets, &c. may be vested in the trustees of the settlement, or other persons, for securing the continued appropriation and maintenance thereof; and the tenant for life may

by inrolled deed declare the terms of the appropriation (sect. 16) :

- (6) On a sale, &c., the surface of minerals, with or without wayleaves, and other rights and easements, may be separately dealt with (sect. 17) :
- (7) Capital money arising under the Act is to be invested or applied as follows :— In government securities, and other trust securities authorized by law or by the settlement, and on debentures or debenture stock of solvent railway companies in Great Britain or Ireland, with power to vary investments ; in discharge of incumbrances, land tax, or other specified charges ; in payment for “improvements,” or for equality of exchange or partition ; in the purchase of seignories, fee simple of copyholds, &c., or reversions of leaseholds ; in the purchase of land, or mines, or easements, &c. in fee simple, or for terms of sixty years or more, or of copyhold or customary land ; in payment to any person absolutely entitled, or of costs, &c. ; or in any other mode authorized by the settlement (sect. 21) :
- (8) “Capital money,” including money in the hands of trustees liable to be laid out in purchase of land under the settlement (sect. 33), is to be paid to the trustees, or into Court, at the option of the tenant for life : if it is paid to the trustees, a tenant for life may select the mode of investment or application ; if he does not select any, the trustees are to select : if the purchase-

money is paid into Court, the Court will direct the mode of investment or application, on the application of the tenant for life, or of the trustees. No investment or application may be altered without the consent of the tenant for life. The capital money devolves under the settlement, as the land from which it arises would have done, and the income goes as the rents of the land if not sold would have gone (sect. 22) :

- (9) Purchase-money of land in England must not be vested in land out of England, unless the settlement otherwise provides (sect. 23) :
- (10) Lands purchased or taken in exchange or on partition are to be conveyed to uses, &c. corresponding as nearly as may be to the uses, &c. declared in the settlement of the settled land (sect. 24) :
- (11) On a mining lease a proportion of the rent, and on a sale of timber a proportion of the purchase-money, is to be set aside as capital money (sects. 11, 35) :
- (12) Where there are no trustees, or where in any other case it is expedient for the purpose of this Act, the Court may, on the application of any person interested under a settlement, or in the case of an infant of his guardian or next friend, appoint trustees (sect. 38). The capital money is not to be paid to fewer than two trustees (sect. 39). Trustees' receipts are to be effectual discharges (sect. 40), and trustees individually



and collectively are to be indemnified for loss, except in case of wilful default, particularly as regards the propriety of acts done by them at the direction of the tenant for life, for the purposes of this Act (sects. 41, 42). They may reimburse themselves for expense properly incurred (sect. 43), and may refer to the Court any differences which may arise between themselves and the tenant for life (sect. 44). A tenant for life is to give notice to them and separately to their solicitors of his intention to exercise any of the powers given to him by this Act; but a person dealing in good faith is not concerned to inquire respecting such notice (sect. 45). A tenant for life in exercise of his powers shall have the duties and liabilities of a trustee for all parties interested (sect. 53).

III.—(1.) Section 25 gives a list of improvements authorized by this Act, to the construction or execution of which capital money may, if the tenant for life thinks proper, be applied. This list includes drainage, irrigation and reclamation of land, building of cottages and farm buildings, mills, &c., making of streets, &c., trial for minerals, and development of mines whether open or not, and other works for developing the settled land as agricultural land, or woodland, or for building or mining purposes. The enumeration of improvements in the Improvement of Lands Act, 1864, is extended so as henceforth to comprise improvements authorized by this Act (sect. 30).

Provisions  
as to im-  
prove-  
ments.

(2.) A tenant for life desirous to apply capital money in "improvements" is to submit a scheme to the trustees or the Court. Where the money is in the hands of trustees, they may apply the money on obtaining a certificate of the Land Commissioners, or of an engineer or surveyor nominated by the trustees and approved by the Commissioners or the Court, or an order of the Court; where the money is in Court, the Court may, on a report of the Commissioners or of an approved engineer or surveyor, or other evidence, make an order for the application of the money (sect. 26).

(3.) A tenant for life may concur with others in executing improvements (sect. 27).

(4.) The tenant for life and his successors must maintain, insure, &c. improvements as the Commissioners may by certificate prescribe; must not cut down timber planted as an improvement, and must report the state of improvements where required by the Commissioners. The Commissioners may vary certificates. If the tenant for life fails to comply with these requirements, he and his estate are liable for loss at the suit of any person having an interest under the settlement (sect. 28).

(5.) A tenant for life is protected from impeachment of waste by any remainderman, in respect of acts necessary for executing and maintaining improvements (sect. 29).

Supple-  
mental  
provisions.

IV. The remaining sections of the Act relate to the constitution, jurisdiction and procedure of the Court and Commissioners, and to the prevention of the transfer by a tenant for life of his powers, and

devices for depriving him of them, and other incidental matters.

(1.) Matters under this Act are assigned in England generally, and in Ireland, to the Chancery Divisions of the respective High Courts; in the County Palatine of Lancaster to the Court of Chancery of the County Palatine in England, where the property in question does not exceed 500*l.* in capital value, or, if land, 30*l.* in annual rateable value, to the County Courts; and in Ireland, where the property does not exceed 500*l.* in capital value or 30*l.* in annual value, to the Civil Bill Courts. Payment of money into Court is an effectual discharge to the payor. Every application is to be by petition or summons; an application by the trustees must be served first on the tenant for life. The Court has full discretion as to costs, and may order payment thereof out of the settled property, and may make general rules of Court for the purposes of the Act (sects. 46, 47, 65). The Court may authorize proceedings for the protection or recovery of land settled, or claimed as settled, at the expense of the estate (sect. 36).

(2.) The persons now bearing the styles of Inclosure Commissioners, Copyhold Commissioners and Tithe Commissioners are henceforth to adopt the style and use the one seal of the Land Commissioners for England. The powers, &c. of the Commissioners and their officers, and matters commenced by them, are not to be affected by this Act. Their new style is to be read into all Acts of Parliament and other documents relating to the three bodies instead of the former styles. The Commissioners are to have, for the purpose of all Acts relating to

the improvement of land, the powers given to them by the Improvement of Land Act, 1864, and the provisions of this Act with regard to their procedure are incorporated in such Acts (sect. 48).

Certificates and reports are to be filed and office copies delivered when required as evidence (sect. 49).

In Ireland the Commissioners of Public Works are substituted for the Land Commissioners (sect. 65).

The powers of a tenant for life under this Act cannot be assigned or released: a contract not to exercise them is void, even in a mortgage, whether made before or after the commencement of the Act (sect. 50). Any provision in a settlement, will or other instrument, purporting to prohibit or limit the exercise of powers by forfeiture or otherwise, is void: and limitations conditional on non-exercise will continue, notwithstanding exercise of a power (sects. 51, 52).

Persons dealing in good faith with a tenant for life are generally protected as against all parties entitled under the settlement (sect. 54).

All powers conferred by this Act are exerciseable from time to time. The tenant for life and the trustees may execute and do all deeds and things necessary for effecting the exercise of powers under this Act (sect. 55).

This Act is without prejudice to all powers conferred on the tenant for life by settlement, statute, or otherwise, but in case of conflict the provisions of this Act are to prevail, and, notwithstanding anything to the contrary in the settlement, the consent of the tenant for life is to be necessary to

---

the exercise by the trustees or other persons of powers conferred by the settlement for purposes of this Act. In case of question arising under this section, any person interested may apply to the Court for advice or direction (sect. 56). Powers additional to or larger than those conferred by this Act may be given by the settlor (sect. 57).

Sect. 64 repeals certain scheduled enactments, viz., sect. 17 of the Settled Estates Act, 1877 (substantially re-enacted by sect. 36 of this Act), sects. 17 and 18, and part of sect. 21 of the Improvement of Land Act, 1864, and the unrepealed portions of 23 & 24 Vict. c. 145.

The Improvement of Land Act, 1864, was passed with the object of amending and consolidating the law relating to the improvement of land by owners of limited interests, and to enable such owners to charge their lands with money subscribed for the construction of railways and canals, which would permanently increase the value of such lands.

Improve-  
ment of  
Land Act,  
1864.

Sect. 1 repeals the Private Drainage Act, 1849; sects. 2—10 define the terms "Commissioners," "landowners," "improvements," &c., and provide for the taking of declarations by assistant Commissioners, the punishment of persons giving false evidence, the service of notices, and other general matters.

Abstract of  
provisions.

Sects. 11—48 contain enactments with regard to proceedings preliminary to the sanction of improvements, *e.g.*, the presentation of applications, the issue of forms, security for expenses, advertise-

ments and notices, signification of dissents, provisional and other orders, and the saving and protection of the rights of the Crown and public bodies.

Sects. 49—72 provide with regard to charges for improvements under the Act. The charges are to be executed by the Commissioners on the completion of the whole or part of the works, may include expenses of applications, &c., and are to be by way of rent-charge created by an absolute order.

Landowners may borrow the amount of certain assessments and charge the inheritance, but must keep down rent-charges: these sections contain other provisions with regard to charges for improvements.

Sects. 72—77 provide that improvements shall be upheld, and their condition certified when required, that neighbouring lands may be entered on for the purpose of repairs of the works, on making compensation for damage done; farm-houses, &c. are to be kept insured, and the Commissioners may compel maintenance of improvements, or release the landowner from the obligation; the Admiralty may remove works abandoned or fallen into decay in any tidal water or river at the cost of the landowner.

Sects. 78—89 relate to charging lands with money subscribed for the construction of railways. A landowner desirous of subscribing may apply to the Commissioners, who, after such inquiries, &c. as they think proper, may entertain the application, and sanction a charge on the land by provisional order; companies are empowered to lend money charged; on completion of the

railway or canal, and deposit of the certificate of shares, the Commissioners may issue an absolute order charging the fee simple of the settled lands: other provisions follow with regard to the registration of shares, and the rights, &c. of parties with regard to the shares.

Sects. 90 and 91 have been repealed and replaced by sect. 6 of the Inclosure Expenses Act, 1868, which provides for the issue of a table of fees by the Commissioners with the approval of the Treasury; the fees are to be payable by stamps, and an account is to be rendered of the stamps issued.

In the schedules to the Act are appended forms of orders and other documents.

---

The Settled Estates Act, 1877, was passed to consolidate and amend the law relating to leases and sales of settled estates. Most of its provisions substantially re-enact the provisions contained in one or other of the repealed Leases and Sales of Settled Estates Acts. The provisions of this Act are so familiar to practitioners that it is unnecessary here to refer to them at any length. It will be sufficient to point out briefly the main points in which this Act differs from the Settled Land Act, 1882.

Settled  
Estates  
Act, 1877.

- (1) By the Settled Estates Act, 1877, all powers of leasing (except the power given to a tenant for life to grant leases for twenty-one years), sale, exchange, &c., are exerciseable only on application to the Court and under its control.

- (2) Applications must be by petition and notices, advertisements and consents of parties are required.
  - (3) The Act makes no express provision for improvements, and the range of improvements authorized by the Courts under the Act is very limited.
  - (4) The powers of investment of capital moneys arising under the Act is limited, and the investment is only provisional until the money can be invested in redemption of land tax and certain charges, in the discharge of incumbrances affecting the settled lands unsold, or in the purchase of other lands to be settled in a similar manner as the settled land.
  - (5) The powers given by the Act are not to be exercised if negatived by the terms of the settlement.
- 

In the Settled Land Act, 1882 (as has been shown above), most of the powers of leasing, sale, &c., are given directly to the tenant for life; applications to the Court are seldom requisite, and may be by petition or summons in chambers. A large range of improvements and securities is authorized, in which capital money may be applied or permanently invested, and the powers given by this Act override all restrictive provisions in a settlement. The provisions of the Settled Estates Act, 1877,



are not (except as regards one section) expressly affected by the Settled Land Act, 1882; the powers given by the former Act are still in full force, and recourse may be had to them in cases where it may be found advisable to do so. It does not seem improbable that such cases will from time to time occur, but it may be expected that the direct exercise by limited owners of their powers under the Settled Land Act, 1882, will in great measure supersede proceedings under the Settled Estates Act, 1877, as regards dealings with settled land, after the 31st December, 1882.

## CHAPTER II.

### THE SETTLED LAND ACT, 1882.

(45 & 46 Vict. c. 38.)

*An Act for facilitating Sales, Leases, and other dispositions of Settled Land, and for promoting the execution of Improvements thereon.*

[10th August, 1882.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

#### I.—PRELIMINARY.

Short title;  
commence-  
ment;  
extent.

1.—(1.) This Act may be cited as the Settled Land Act, 1882.

(2.) This Act, except where it is otherwise expressed (*a*), shall commence and take effect from and immediately after the thirty-first day of December, one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act (*b*).

(3.) This Act does not extend to Scotland.

Com-  
mencement  
of the Act.

(*a*) Although a date is by this section fixed for the commencement of the Act, the operation of the Act is retrospective as regards trusts created by instruments made before the commencement of the Act. See the definition of settlement in sect. 2 (1), *post*, p. 19, and the provisions with regard to a trust for sale of land, sect. 63, *post*, p. 115. Also, by sect. 50, subsect. 4, the operation of the Act is extended to assignments by

way of mortgage and otherwise, and to acts done before the commencement of the Act, *post*, p. 100.

(b) Rules of Court may be made under sect. 46, *post*, p. 90, Rules of Court. and, as regards Ireland, under sect. 65, *post*, p. 121, to take effect on or after the commencement of the Act.

## II.—DEFINITIONS.

2.—(1.) Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act (c), under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession (d), creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires.

Definition of settlement, tenant for life, &c.

(2.) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator's heir, is for purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement (e).

(3.) Land, and any estate or interest therein, which is the subject of a settlement, is for purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.

(4.) The determination of the question whether land is settled land, for purposes of this Act or not, is governed by the state of facts, and the

limitations of the settlement, at the time of the settlement taking effect (*f*).

(5.) The person who is for the time being, under a settlement, beneficially entitled to possession (*g*) of settled land, for his life, is for purposes of this Act the tenant for life of that land, and the tenant for life under that settlement (*h*).

(6.) If, in any case, there are two or more persons so entitled as tenants in common (*i*), or as joint tenants, or for other concurrent estates or interests (*k*), they together constitute the tenant for life for purposes of this Act.

(7.) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent (*l*).

(8.) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement.

(9.) Capital money (*m*) arising under this Act, and receivable for the trusts and purposes of the settlement, is in this Act referred to as capital money arising under this Act.

(10.) In this Act—

(i) Land (*n*) includes incorporeal hereditaments, also an undivided share in land; income (*o*) in-

cludes rents and profits; and possession includes receipt of income:

(ii) Rent (*p*) includes yearly or other rent, and toll, duty, royalty, or other reservation, by the acre, or the ton, or otherwise; and, in relation to rent, payment includes delivery; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift:

(iii) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings; and a building lease (*q*) is a lease for any building purposes or purposes connected therewith:

(iv) Mines and minerals mean mines and minerals whether already opened or in work or not, and include all minerals and substances in, on, or under the land, obtainable by underground or by surface working; and mining purposes (*r*) include the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals, in or under the settled land, or any other land, and the erection of buildings, and the execution of engineering and other works, suitable for those purposes; and a mining lease (*s*) is a lease for any mining purposes or purposes connected therewith, and includes a grant or licence for any mining purposes:

(v) Manor (*t*) includes lordship, and reputed manor or lordship:

(vi) Steward includes deputy steward, or other proper officer, of a manor:

(vii) Will (*u*) includes codicil, and other testamentary instrument, and a writing in the nature of a will:

(viii) Securities include stocks, funds, and shares:

(ix) Her Majesty's High Court of Justice is referred to as the Court (*x*):

(x) The Land Commissioners for England as constituted by this Act are referred to as the Land Commissioners (*y*):

(xi) Person includes corporation.

Retrospective effect of Act.

(c) These words make the Act retrospective so as to affect all settlements, as hereby defined, whenever made. By sect. 63, *post*, p. 115, the meaning of the term "settlement," under this Act, is extended so as to include trusts and directions for sale of land, and for the application of the income of the proceeds, or of the land till sale, for the benefit of any person for his life, and such person is to be deemed to be the tenant for life.

Definition of settlement.

(d) This definition of a settlement is very similar to that contained in the Settled Estates Act, 1877 (sect. 2), *post*, p. 203; and see notes to that section. Under that Act, a devise of land to trustees upon trust out of the rents and profits to pay an annuity to A., and after her death for her children who should attain twenty-one years, with a gift over, was held not to be a limitation "by way of succession." *Re Burdin*, 28 L. J., Ch. 840. The devise in this case does not appear to have been upon trust for sale; it may therefore perhaps be open to doubt whether under similar limitations A. would have the powers of a tenant for life under this Act, see note (*h*), *post*, p. 119.

(e) This sub-section corresponds closely with the provision contained in the Settled Estates Act, 1877 (sect. 2).

(f) See Settled Estates Act, 1877 (sect. 2).

Possession.

(g) See Settled Estates Act, 1877 (sect. 16), and as to the meaning of the words "entitled to possession" within that Act, see *Taylor v. Taylor*, 3 Ch. D. 147; see also next note (*ix*).

Limited owners.

(h) Sect. 58, *post*, p. 108, enumerates nine classes of persons, besides a tenant for life strictly so called, who are to have the powers of a tenant for life under this Act, viz.:—

(i) A tenant in tail:

(ii) A tenant in fee with executory gift over on failure of issue, &c.:

(iii) An owner of a base fee:

(iv) A tenant for years determinable on life:

(v) A tenant *pur autre vie*:

(vi) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease on a certain event, or is subject to a trust for accumulation of income:

- (vii) A tenant in tail after possibility of issue extinct:
  - (viii) A tenant by the curtesy:
  - (ix) "A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale of the land, or until forfeiture of his interest therein on bankruptcy or other event."
  - (i) As to the nature and incidents of tenancies in common and joint tenancies, see Williams, R. P. 14th ed. p. 137; see also Co. Lit. 180 a; 2 Bl. Com. 187; Bac. Abr. tit. "Joint Tenants." Tenants in common, &c.
  - (k) For instance, coparceners. If one seised of an estate of inheritance die, and his estate descends to females of kin to him in equal degree, they hold in parcenary, and make one heir to their ancestor. Brothers may be coparceners by custom of gavelkind. Bac. Abr. tit. "Coparceners" (A); see also Co. Lit. 254, 265. Coparceners.
  - (l) As to the powers of a tenant for life under this Act not being assignable, and being exercisable notwithstanding any restrictive stipulation to the contrary, see sect. 50, *post*, p. 100. As to the extinction of powers by alienation, see *Alexander v. Mills*, L. R., 6 Ch. A. 124. Powers not assignable.
  - (m) Capital money was defined in the bill as originally introduced, as "including purchase-money on sale, equality money on exchange or partition, fine or lease or licence, money raised on mortgage or charge, and mining rent set aside as capital." Capital money.
- Money derived from the following sources will be "capital money arising under this Act," viz. :—
- (i) Money received in respect of a sale or for equality of exchange or partition of settled land (sects. 3, 4) :
  - (ii) Money arising by the sale of heirlooms (sect. 37) :
  - (iii) Money raised by mortgage of the settled land (sect. 18) :
  - (iv) The proceeds of the sale of securities subject to the settlement (sect. 22) :
  - (v) Consideration-money paid for variation or rescission of contracts (sect. 31 (ii)) :
  - (vi) Money in Court under the Lands Clauses Acts or the Settled Estates Act, 1877 (sect. 32) :
  - (vii) Money in the hands of trustees applicable to purchase of land (sect. 33) :
  - (viii) A proportion of the net proceeds of the sale of timber (sect. 35) :
  - (ix) A proportion of the rent under a mining lease (sect. 11) :
  - (x) Purchase-money paid in respect of leases for lives or for years. In this case, however, the trustees or the Court have discretionary powers to apply the money otherwise than according to the rules governing the application of other capital money (sect. 34).
- As to fines on granting or renewal of leases, see sect. 7, *post*, p. 32; and as to moneys taken in consideration of the acceptance of a surrender, see sect. 13, *post*, p. 40.
- (n) The strict primary legal signification of land is arable "Land."

land, Shep. Touch. 92, but it is also used in law to comprehend in law "any ground, soil or earth whatsoever. It legally includeth also all castles, houses and other buildings," and water, while it also includes all mines and minerals (unless expressly excepted) below the surface; "and lastly, the earth hath in law a great extent upwards, not only of water as hath been said, but of ayre and all other things even up to heaven; for *cujus est solum ejus est usque ad cælum*," Co. Lit. 4 a; see also 2 Bl. Com. 18.

"Land" here includes under "incorporeal hereditaments," manorial rights, rent-charges, tithes, advowsons, rights of way and other easements, and rights of common. The definition here given does not extend to "any estate or interest in land," as in the Statute of Limitations, sect. 1; see subs. (1) of this section, where land is spoken of as distinct from an estate or interest in land.

3 & 4 Will.  
4, c. 27.

"Income."

(o) "Income" will, under this definition, include rent-charges and all other rents and profits arising from land, whether fixed or occasional, *e.g.*, heriots and fines payable in respect of copyholds or renewable leases for lives, *Earl Cowley v. Wellesley*, L. R., 1 Eq. 656; *Brigstocke v. Brigstocke*, 8 Ch. D. 357; and the proceeds of the sale of the next presentation to a living, *Earl of Albemarle v. Rogers*, 2 Ves. 477; *Cooke v. Cholmondeley*, 3 Drew. 1.

"Possession" will include receipt of "net income," subject to expenses of management, see sect. 58 (ix), *post*, p. 108, see also note (h), *ante*, p. 23.

As to provisions with regard to "income" in this Act, see sects. 10 (6), 31 (3), 48, 58 (1).

"Rent."

(p) "Rent" may be defined as a profit issuing out of lands as a compensation for the use thereof during the term for which they are demised, and an acknowledgment by the tenant of his tenure. Wharton, Law Lex. As to the meaning of the term "rent," and its nature and incidents generally, see *Lord Zouche v. Dalbiac*, L. R., 10 Ex. 172; see also Co. Lit. 142 a, and Cruise, Dig. iii. tit. 28.

"Tolls."

"Tolls" are of several kinds:—(i) "Tolls thorough," being the sums demanded for passing along a highway or street, or along the sea or a navigable river. Com. Dig. tit. Toll (c). (ii) "Tolls traverse," payable in respect of leave to traverse or go over the land of another, as to which see Woodfall, L. & T. 74. (iii) "Fair or market tolls," payable to the lord of a manor or other person having the right of holding a fair or market; the right of taking market tolls can exist only by special grant of the crown, or by prescription, and if the toll is unreasonable the grant will be void. *Heddey v. Wheelhouse*, Cro. Eliz. 558. (iv) "Ferry tolls," payable in respect of crossing a river or creek. See as to tolls generally, Gunning on Tolls.

"Duties."

The chief kinds of duties are—(i) Port and harbour dues, some of which are incident to the property in the soil of the port, *e.g.*, "anchorage," a duty for anchoring in a port; and



"ballastage," a duty for taking ballast from the bottom of the port, while others arise from special custom or prescription—e. g., "busselage," "keelage," &c. (ii) "Wharfage" and "cranage," the former being duty payable for lodging goods on a wharf or shipping them therefrom; the latter being payable for the use of cranes, &c., in loading and unloading. (iii) "Dock dues," the right to which depends on various acts of parliament under which the docks were constructed. See generally as to duties, Gunning, pp. 129 *et seq.*

A "royalty" with regard to land is a payment in money or kind, reserved instead of or in addition to a fixed rent in leases of brick-fields and mines or quarries, and generally depending on the quantity of bricks, tiles, &c. manufactured or minerals raised.

(g) "Building lease" in this Act, as in the Conveyancing, &c. Act, 1881, sect. 2, includes repairing lease; see sect. 9 (1), *post*, p. 36, which empowers a tenant for life to grant "building leases" for 99 years. The Settled Estates Act, 1877, draws a distinction between the two classes of leases, and empowers the Court to authorize "building" and "repairing" leases for terms of 99 and of 60 years respectively.

(r) As to the meaning of the word "winning" as applied to minerals, see the observations of Lord Hatherley, C., in *Lewis v. Fothergill*, L. R., 5 Ch. A. 111. The "sinking" of mines, and "smelting or otherwise converting or working for the purposes of any manufacture" of minerals, are not included in the definition of "mining purposes" in the Conveyancing Act of 1881, sect. 2.

(s) Although the term "mining lease" includes "licence" for the purposes of this Act, there is an important difference between the two as regards their nature and incidents. A lease conveys an exclusive estate or interest in the minerals, but a licence merely entitles the grantee to work and appropriate the minerals, and leaves the property in them in the grantor till they are severed from the land; and unless the licence is in express terms exclusive of the grantor and those claiming under him, it will not enable the grantee to prevent the grantor and such other persons from also working the minerals. *Chatham v. Wilkinson*, 4 East, 469; *Carr v. Benson*, L. R., 3 Ch. A. 524. See generally as to mining leases and licences, *Dav. Conv. v. 315*; *Bainbridge on Mines*, p. 513. The words "or any other land" authorize the working of mines by instroke and outstroke from adjoining mines (as to which, see *Lewis v. Fothergill*, *ubi supra*; *Jegon v. Vivian*, L. R., 6 Ch. A. 742); and also the raising through the shafts on the settled estates of minerals from under adjoining lands.

(t) By 4 & 5 Vict. c. 35, sect. 102, it is provided that for the purposes of that Act "the word manor shall extend to a manor or reputed manor of whatever tenure the same may be, or to such portion or portions of a manor as the [Enclosure] Commissioners shall by any order in writing under their hands and seals, with the consent of the lord of the manor signified by

"Royalty"

"Building lease."

"Winning."

"Mining lease."

"Manor."

writing under his hand and seal, direct to be considered as a manor for the purpose of effecting any commutation or enfranchisement under this Act."

Lordship or  
seignory.

In ancient times the most usual form of alienation of land was by subinfeudation. When an owner in fee, holding either direct from the Crown or under a mesne lord, wished to part with a portion of his property, he would convey it to the grantee and his heirs, to hold of himself and his heirs (*tenendum de me et heredibus meis, sibi et heredibus suis*), reserving certain rents, services and benefits, the right to which constituted a lordship or seignory. The principal services usually reserved by ancient deeds of grant were homage and fealty (of which the former was abolished by 12 Chas. 2, c. 24, and the latter has become obsolete) and suit of Court, or the duty of the tenant to attend at the Court holden by his lord. Grants are not uncommon in Ireland, whereby the fee is parted with in consideration of the reservation of a fee farm or other rent, and also of other seignorial rights and benefits, *e. g.*, sporting, timber, minerals, seaweed, &c. A "manor" is constituted by the union of the lordship or seignory over the freeholds granted out (*terræ tenementales*) and copyholds, with the possession of the demesne lands (*terræ dominicales*) reserved by the lord for his own use and occupation. Co. Lit. 58 a; 2 Bl. Com. 53.

See also, generally, as to the nature and incidents of manors and seignories, Cruise, Dig. i. pp. 19—34; Burton's Compendium, ch. vi. p. 319.

"Will."

(u) "Will" under this definition, includes a testamentary appointment by a married woman, as to which see *Willock v. Noble*, L. R., 7 H. L. 580; *In re Savage*, L. R., 2 P. & M. 78. A testamentary instrument in the nature of a codicil, where no will was to be found, was admitted to probate. The concluding words of the definition would apparently apply to informal testamentary dispositions by soldiers and sailors: as to which see 1 Vict. c. 26, s. 12, and *Herbert v. Herbert*, 1 Deane, 6; 1 Jur., N. S. 1177; *Re Parker*, 28 L. J., Prob. 91. They are not of course intended to include documents which, from defective execution or otherwise, could not be admitted to probate.

Securities.  
35 & 36  
Vict. c. 44.

In the Court of Chancery (Funds) Act, 1872, sect. 3, the term "securities" includes government securities and any security of any foreign state, any part of her Majesty's dominions out of the United Kingdom, or any body corporate or company, or standing in books kept by any body corporate or company, or person in the United Kingdom, and all stocks, funds and effects.

County  
courts.

(x) As to the jurisdiction of the County Courts in England, see sect. 46, *post*, p. 90; and as to the jurisdiction of the Civil Bill Courts in Ireland, see sect. 65, *post*, p. 121.

Commis-  
sioners.

(y) As to constitution of the Land Commissioners for England, see sect. 48, *post*, p. 96. By sect. 65 (9), *post*, p. 122, the Commissioners for Public Works in Ireland are substituted for the Land Commissioners.

### III.—SALE; ENFRANCHISEMENT; EXCHANGE; PARTITION.

#### *General Powers and Regulations.*

#### 3. A tenant for life (z)—

- (i) May sell the settled land (a), or any part thereof, or any easement, right or privilege of any kind, over or in relation to the same; and
- (ii) Where the settlement comprises a manor (b), —may sell the seignory of any freehold land within the manor, or the freehold and inheritance of any copyhold or customary land, parcel of the manor, with or without any exception or reservation of all or any mines or minerals, or of any rights or powers relative to mining purposes (c), so as in every such case to effect an enfranchisement; and
- (iii) May make an exchange of the settled land, or any part thereof, for other land, including an exchange in consideration of money paid for equality of exchange; and
- (iv) Where the settlement comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares,—may concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition.

Powers to tenant for life to sell, &c.

(z) As to meaning of tenant for life see sect. 2, *ante*, p. 20; and as to trusts for sale of land sect. 63, *post*, p. 115.

The powers of sale, &c. given to a tenant for life by this section enable him directly to deal with the settled land according to his own judgment and discretion, without a necessity for the trustees taking any active steps in the matter

Tenant for life.

or for an application to the Court for sanction, under the Settled Estates Act, 1877.

The Settled Estates Act, 1877, sect. 16, empowers the Court to authorize sales of settled estates and of timber. This power is left intact by the present Act, and recourse may accordingly still be had to the Court for such authority in any special cases where it may be found advisable to take that course. Generally, however, when a tenant for life is desirous of effecting a sale, the most convenient and inexpensive mode of proceeding will be to exercise his powers under the present Act.

Infant.

When the tenant for life is an infant his powers can be exercised on his behalf by the trustees of the settlement without the direction or sanction of the Court, and, if there are no trustees, the powers are exercisable by persons to be appointed for that purpose by the Court on the application of the guardian or next friend of the infant (sect. 60, *post*, p. 111).

Married woman.

As to how the powers of a tenant for life are exercisable in the case of a married woman see sect. 61, *post*, p. 112. And as to a lunatic tenant for life see sect. 62, *post*, p. 114.

Lunatic.

School Sites Acts.

By the School Sites Act, 1841 (4 & 5 Vict. c. 38), s. 2, tenants for life in possession of settled lands, with the concurrence of "the person next entitled to the same in remainder in fee simple or fee tail," may grant and convey "by way of gift, sale or exchange in fee simple or for a term of years any quantity not exceeding one acre of such land as a site for a school for the education of poor persons, or for the residence of the schoolmaster or schoolmistress, or otherwise for the purposes of the education of such poor persons in religious and useful knowledge."

By 12 & 13 Vict. c. 39, s. 3, it is provided that the same person may grant several sites for schools in the same parish if the whole extent does not exceed one acre; and by 14 & 15 Vict. c. 24, s. 1, "parish" is to signify ecclesiastical district in a divided parish.

Places of Worship Sites Acts.

By the Places of Worship Sites Act, 1873 (36 & 37 Vict. c. 50), s. 1, similar powers are given to tenants for life, with the concurrence of the person next entitled in remainder in fee simple or fee tail (if legally competent), to grant sites "for a church, chapel, meeting-house or other place of divine worship, or for the residence of a minister officiating in such place of worship, or in any place of worship within one mile of such site, or for a burial-place on any number of such sites, provided that each such site does not exceed the extent of one acre." It has been held that a father who was tenant for life of a settled estate could, as guardian by nature of his infant son who was entitled in remainder, concur on behalf of his son in a grant by himself of part of the settled estates under this section. *Re Marquis of Salisbury*, L. R., 2 Ch. D. 29. This Act has been extended by the Places of Worship Sites Amendment Act, 1882 (45 & 46 Vict. c. 21). Statutory forms of grants under the Places of Worship Sites Acts and School Sites Acts will be found *post*, pp. 322, 323.

Powers of sale.

(a) The powers by this section given to a tenant for life apply to land subject to settlements made, whether by deed, will

or otherwise, before the commencement of the Act. See sect. 2 (1), (5), *ante*, pp. 19, 20. As to the regulations respecting the exercise of these powers, see sect. 4, *infra*.

These powers, unlike those given to trustees by the Settled Estates Act, 1877, override any restrictive provisions contained in the settlement, whether made before or after the commencement of the Act, sect. 56 (2), *post*, p. 106.

(b) As to the nature and incidents of a manor and a seignory, see note to sect. 2, *ante*, p. 25. Manor.

(c) Upon a sale of mines apart from the surface, under the Leases and Sales of Settled Estates Act, 1856, it was held that the Court had power to grant to the purchaser the right of using the surface for the workings, reserving a rent-charge in respect of damage to the surface. *Re Milward*, L. R., 6 Eq. 248. Having regard to the provisions contained in sect. 17 of this Act, a tenant for life would apparently have power to make a similar arrangement. Sale of mines.

4.—(1.) Every sale shall be made at the best price (*d*) that can reasonably be obtained.

(2.) Every exchange and every partition shall be made for the best consideration in land or in land and money that can reasonably be obtained.

(3.) A sale may be made in one lot or in several lots, and either by auction or by private contract (*e*).

(4.) On a sale the tenant for life may fix reserve biddings and buy in at an auction (*f*).

(5.) A sale, exchange, or partition may be made subject to any stipulations respecting title, or evidence of title, or other things (*g*).

(6.) On a sale, exchange, or partition, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or with respect to or for the purpose of the more beneficial working thereof, or with respect to any other thing, may be imposed or reserved and made binding, as far as the law permits, by covenant, condition, or otherwise, on the tenant for life and the settled land, or any part thereof, or on the other party and any land sold or given in exchange or on partition to him.

Regulations respecting sale, enfranchisement, exchange, and partition.

(7.) An enfranchisement may be made with or without a re-grant of any right of common or other right, easement, or privilege theretofore appendant or appurtenant to or held or enjoyed with the land enfranchised, or reputed so to be.

(8.) Settled land in England shall not be given in exchange for land out of England.

(d) This Act does not authorize grants by a tenant for life in consideration, partly or altogether, of a fee farm rent, except for building or mining purposes, and under the authority of an order of the Court (sect. 10, *post*, p. 37).

Sale by  
private  
contract.

(e) Formerly, unless the power of sale in the settlement expressly authorized a sale by private contract, it was generally considered advisable to sell by auction, so as to avoid questions with persons beneficially interested as to the adequacy of the price obtained. *Dart, V. & P. 67.*

Costs of  
abortive  
attempt at  
sale.

(f) It is to be presumed that the costs of an abortive attempt to sell will be payable out of "capital money," as being costs incidental to the exercise of a power under this Act. See sect. 21 (x), *post*, p. 49.

Special  
stipulations.

(g) Although the tenant for life is hereby enabled to sell subject to any stipulations respecting title and otherwise, such stipulations must be reasonable. The Court restrained by injunction the completion of a sale by trustees under conditions calculated to depreciate the value of the property at the auction, and inserted without reasonable grounds. *Dance v. Goldingham*, L. R., 8 Ch. A. 902.

### *Special Powers.*

Transfer of  
incum-  
brances on  
land sold,  
&c. (h).

5. Where on a sale, exchange, or partition there is an incumbrance affecting land sold or given in exchange or on partition, the tenant for life, with the consent of the incumbrancer, may charge that incumbrance on any other part of the settled land, whether already charged therewith or not, in exoneration of the part sold or so given, and, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, make provision accordingly.

Incum-  
brance.

(h) In the Conveyancing Act, 1881, sect. 2 (vii), the terms "incumbrance" and "incumbrancer" are defined as follows: "Incumbrance includes a mortgage in fee or for a less estate,

and a trust for securing money, and a lien, and a charge of a portion, annuity or other capital or annual sum; and incumbrancer has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance or to require payment or discharge thereof."

A tenant for life cannot sell settled land subject to mortgage, so as to affect the right of the mortgagee, without the consent of the latter (sect. 50, *post*, p. 100).

#### IV.—LEASES.

##### *General Powers and Regulations.*

6. A tenant for life (*j*) may lease the settled land, or any part thereof (*k*), or any easement, right, or privilege of any kind, over or in relation to the same, for any purpose whatever, whether involving waste or not (*l*), for any term not exceeding—

Power for tenant for life to lease for ordinary or building or mining purposes (*i*).

(i) In case of a building lease, ninety-nine years:

(ii) In case of a mining lease, sixty years (*m*):

(iii) In case of any other lease, twenty-one years (*n*).

(i) By the Settled Estates Act, 1877, s. 46, tenants for life are empowered to grant leases for twenty-one years in England, or for thirty-five years in Ireland (*vide post*, p. 234).

Powers of leasing.

The power given by the present section is more extensive, as (i) it authorizes the granting of building leases (including repairing leases, see sect. 9 (i)) for ninety-nine years and of mining leases for sixty years, both of which classes of leases could hitherto only have been granted under the sanction of the Court; (ii) it empowers the granting of leases involving waste; and (iii) the power exerciseable notwithstanding any declaration or provision in the settlement to the contrary, see sect. 51, *post*, p. 101.

Under the Settled Estates Act, 1877, s. 4 (*vide post*, p. 207), the Court has power to authorize leases of settled estates for terms of years similar to those mentioned in this section, except that a mining lease, or a lease of water-mills, wayleaves, waterleaves or other rights or easements may be authorized for terms not exceeding forty years, and repairing leases for terms not exceeding sixty years.

(*j*) The receipt of *net* rents, after deducting the expenses of management by the trustees, constitutes a tenancy for life; see sect. 58 (ix), *post*, p. 108.

Receipt of net rents.

(*k*) Under the Leases and Sales of Settled Estates Act, 1856, the Court refused to sanction the demise by a single lease of contiguous land held under two distinct settlements. *Tolson v. Sheard*, 5 Ch. D. 19.

Other  
leases.

(l) See note (r), p. 68, as to waste.

(m) A mining lease is a lease for mining purposes, including the sinking of unopened mines, see sect. 2, 10, sub-sect. (iv).

(n) Under this category will come agricultural leases and leases of "water-mills, wayleaves, waterleaves" (*vide supra*), and of rights of shooting or fishery. A grant of wayleaves and other easements connected with mining purposes may be included in a mining lease (sect. 17, *post*, p. 45); but the authority of the Court under the Settled Estates Act, 1877, will still be generally necessary for the grant of leases for terms exceeding twenty-one years, except in connection with building or mining purposes.

In Ireland a lease other than a building or mining lease may be granted under this Act for any term not exceeding thirty-five years. Sect. 65 (7), *post*, p. 122.

Regula-  
tions re-  
specting  
leases  
generally.

7.—(1.) Every lease shall be by deed (o), and be made to take effect in possession (p) not later than twelve months after its date.

(2.) Every lease shall reserve the best rent (q) that can reasonably be obtained, regard being had to any fine taken (r), and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case.

(3.) Every lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days (s).

(4.) A counterpart (t) of every lease shall be executed by the lessee and delivered to the tenant for life; of which execution and delivery the execution of the lease by the tenant for life shall be sufficient evidence (u).

(5.) A statement, contained in a lease or in an indorsement thereon, signed by the tenant for life, respecting any matter of fact or of calculation under this Act in relation to the lease, shall, in favour of the lessee and of those claiming under him, be sufficient evidence of the matter stated.

8 & 9 Vict.  
c. 106.

(o) By 8 & 9 Vict. c. 106, s. 3, it is provided that a lease,



required by law to be in writing, shall be void at law unless made by deed.

(p) In *Re Ford* (L. R., 8 Eq. 309), it was held that a new lease effected upon surrender of an existing lease would "take effect in possession," notwithstanding that an underlease granted by the lessee was unexpired. New lease on surrender.

(q) Whether the "best rent" is reserved is a question of fact to be decided by the jury. See *Sugd. Pow.* 786, where the question as to what stipulations are compatible with the reservation of the best rent is fully considered; see also *Doe v. Radcliffe*, 1 East, 278. The value of a lease surrendered may be taken into account. Sect. 14 (5), *post*, p. 42. "Rent" includes "royalty," &c., see sect. (2), note (p), *ante*, p. 25. Best rent.

(r) By sect. 50, *post*, p. 100, a tenant for life may grant leases at the best rent without fine, without the consent of an assignee, by way of mortgage or otherwise, unless such assignee is actually in possession. Fines.

This provision authorizing the taking of a fine is novel, and one contrary to the principles hitherto regulating statutory enactments, and the general practice of modern conveyancers with regard to powers of granting leases of settled land. As originally drawn, this Act provided that any fines taken should be capital money arising under the Act, but the question whether fines should be applied as capital or income is now left to be settled by judicial decision. Capital or income.

Most of the reported cases with regard to fines have reference to copyholds and renewable leases for lives. In a case, however, where, under a will, there was a power for the tenant for life in possession for the time being to make leases or demises of the settled estate, "for one, two or three lives in possession, reversion or remainder, or for any term of years in possession, reversion, or remainder, to end or determine upon the death of one, two or three persons, or for the term of twenty-one years absolutely . . . so as the usual rents of such of the premises respectively as shall be so leased or demised upon fines, and the best rents that can reasonably be gotten for such of the premises respectively as shall be so leased or demised without fines, be respectively reserved;" Lord Mansfield, C. J., said, "There are two methods of leasing in common use in this kingdom, at the best rent, and upon fines, which, as the lives or leases drop, are considered among the annual profits." *Taylor v. Horde*, 1 Burr. 121.

In *Earl Cowley v. Wellesley* (L. R., 1 Eq. 656), it was decided that fines paid on grants made by trustees of waste lands of manors forming part of the settled estate were to be treated as income. See also *Simpson v. Bathurst*, L. R., 5 Ch. A. 193.

Property demised for a term determinable on the dropping of three lives at a yearly rent, and a heriot payable on the dropping of each life, with a covenant for perpetual renewal at a fixed fine, was settled subject to the lease in strict settlement, with powers for the trustees to grant leases with or without covenants for renewal, so that the best rent should be reserved without taking fine or premium; it was held by the

Court of Appeal (reversing the decision of Bacon, V.-C.), that the fines belonged to the tenant for life. Jessel, M.R., said, "A certain sum payable at certain intervals is as much rent as if it were an annual sum. It is true that a fine is in the nature of a payment of rent beforehand, but a tenant for life is entitled to rent made payable beforehand, as much as to any other rent." And Cotton, L. J., added, "In most cases where provision is made by a settlement for granting leases at a fine, directions are given for investing the fine as capital, and hence, a notion has grown up that fines ought to be treated as capital. Here the lease was granted before the settlement, and there is no direction as to the application of the fines. I can see no reason why the tenant for life should not receive the fine for renewal. It is a casual profit, but a casual profit accruing during the tenancy for life." *Brigstocke v. Brigstocke*, 8 Ch. D. 357.

Before the passing of the Act, 5 & 6 Vict. c. 108, ecclesiastical corporations frequently granted leases in consideration of fines, which were appropriated as income, the validity of which practice was never questioned. Cripps, *Laws of the Church*, p. 246.

It does not, however, seem reasonable to suppose that a tenant for life will be allowed to grant long leases of the settled land, *e.g.*, for building purposes in consideration of a heavy fine, and a rent which is only the best, having regard to the fine, and to take the fine for his own benefit. It is submitted that such a fine would be *pro tanto* of the nature of "purchase-money paid in respect of a lease," and, as such, would be capital money applicable under sect. 34, *post*, p. 73, in such manner as in the judgment of the trustees or the Court is fair to the parties interested.

#### Re-entry.

(s) Although a provision of this kind does not permit of further time being allowed, yet a reasonable qualification may be introduced into the clause for re-entry, *e.g.*, a want of sufficient distress (*Lord Tankerville v. Wingfield*, 2 Brod. & Bing. 498), or, that the rent shall be behind thirty days, having been lawfully demanded. *Coxe v. Day*, 13 East, 118; and see Sugd. Pow. 822. Where, under the circumstances of a particular case, special conditions appear advisable, the Court has power, under sect. 5 of the Settled Estates Act, 1877, to authorize their insertion in the lease, *post*, p. 210.

#### Counterpart.

(t) It would appear that the execution of the counterpart need not be contemporaneous with the lease. *Fryer v. Coombs*, 11 Ad. & El. 403.

#### Evidence.

(u) The provision as to evidence of execution is not contained in sect. 4 of the Settled Estates Act, 1877, *post*, p. 209.

### *Building and Mining Leases.*

#### Regulations respecting

**8.—(1.)** Every building lease shall be made partly in consideration of the lessee, or some per-

son by whose direction the lease is granted, or some other person (*v*), having erected, or agreeing to erect, buildings, new or additional, or having improved or repaired, or agreeing to improve or repair (*x*), buildings, or having executed, or agreeing to execute, on the land leased, an improvement authorized by this Act (*y*), for or in connexion with building purposes. building leases.

(2.) A peppercorn rent or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.

(3.) Where the land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner (*z*); save that—

- (i) The annual rent reserved by any lease shall not be less than ten shillings; and
- (ii) The total amount of the rents reserved on all leases for the time being granted shall not be less than the total amount of the rents which, in order that the leases may be in conformity with this Act, ought to be reserved in respect of the whole land for the time being leased; and
- (iii) The rent reserved by any lease shall not exceed one-fifth part of the full annual value of the land comprised in that lease with the buildings thereon when completed.

(*v*) The words “or some other person,” which were included in the original draft of the bill, were left out in the amended draft, but have been reinserted in the Act as it now stands. These words are apparently intended to include sub-lessees, husbands and wives of lessees who have recently erected or re-

paired, or agreed to erect or keep in repair, buildings. It cannot be intended that the existence of buildings, whenever and by whomsoever built, and hitherto kept in repair, will empower a tenant for life to demise the land on which the buildings stand, and which is appurtenant thereto, for (say) ninety-nine years, without any covenant or undertaking to keep the buildings in repair for the future. Leases may be made without impeachment of waste; see sect. 6, *ante*, p. 31.

Covenant  
to repair.

(x) Where in a settlement power was given to trustees to demise house property to any person who should improve or repair, or covenant to improve or repair the same, it was held by the Court of Appeal (reversing the decision of Chitty, J.) that a demise to a tenant who undertook "to do the necessary repairs" was within the requirements of the power. *Truscott v. Diamond Rock Boring Co.*, 20 Ch. D. 251.

By sect. 4 of the Settled Estates Act, 1877, the Court has power to sanction the granting of repairing leases for sixty years only.

Improve-  
ments.

(y) As to improvements authorized by this Act, see sect. 25, *post*, p. 59.

Appor-  
tionment  
of rent.

(z) This clause authorizes generally with regard to settled land what is a usual arrangement in large building agreements, namely, that the best rent shall be reserved as to the whole property, but that the builder shall upon taking leases have a limited option as to the apportionment of rent.

Regula-  
tions re-  
specting  
mining  
leases.

## 9.—(1.) In a mining lease—

- (i) The rent (*a*) may be made to be ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of, in or from the settled land, or any other land, or by or according to any facilities given in that behalf; and
- (ii) A fixed or minimum rent may be made payable, with or without power for the lessee, in case the rent, according to acreage or quantity, in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of

rent other than the fixed or minimum rent.

(2.) A lease may be made partly in consideration of the lessee having executed, or his agreeing to execute, on the land leased, an improvement authorized by this Act (b), for or in connexion with mining purposes.

(a) Where in a settlement the power of leasing mines, &c. like that given by this Act, sect. 8 (3), required that every demise should reserve the "best rent," and contain a condition for re-entry on rent not being "paid," it was held that a reservation in lieu of rent of a proportion of the ore was nevertheless good. *Campbell v. Leach*, Amb. 740.

Reserva-  
tion of  
rent in  
kind.

A power to grant mining leases has been held to include, as incident to such power, the right to grant as much surface land as is necessary for convenient and efficient working of the minerals. *Morris v. Rhydyfedd Colliery Co.*, 7 W. R. 95; 5 Jur. N. S. 339; *Re Reveley*, 11 W. R. 774.

Grant of  
surface.

(b) As to improvements authorized by this act, see sect. 25, *post*, p. 59.

Improve-  
ments.

10.—(1.) Where it is shown to the Court with respect to the district in which any settled land is situate, either—

Variation  
of building  
or mining  
lease  
according  
to circum-  
stances of  
district (c).

- (i) That it is the custom for land therein to be leased or granted for building or mining purposes for a longer term or on other conditions than the term or conditions specified in that behalf in this Act, or in perpetuity; or
- (ii) That it is difficult to make leases or grants for building or mining purposes of land therein, except for a longer term or on other conditions than the term and conditions specified in that behalf in this Act, or except in perpetuity;

the Court may, if it thinks fit, authorize generally the tenant for life to make from time to time

leases or grants of or affecting the settled land in that district, or parts thereof, for any term or in perpetuity, at fee-farm (*d*) or other rents, secured by condition of re-entry, or otherwise, as in the order of the Court expressed, or may, if it thinks fit, authorize the tenant for life to make any such lease or grant in any particular case.

(2.) Thereupon the tenant for life, and, subject to any direction in the order of the Court to the contrary, each of his successors in title being a tenant for life, or having the powers of a tenant for life under this Act, may make in any case, or in the particular case, a lease or grant of or affecting the settled land, or part thereof, in conformity with the order.

**Variation  
of leases.**

(c) The Settled Estates Act, 1877, sect. 4, gives the Court similar powers of authorizing leases (other than agricultural leases) for longer than the statutory term. See *post*, p. 208.

The Court has no power under this Act to authorize fee-farm grants or leases for longer than the statutory terms, except for building or mining purposes.

In and near London, building leases are generally granted for terms of 99 years, but in the north of England leases in perpetuity or for very long terms of years are usual. A building lease of lands at St. Helen's, in Lancashire, for 600 years was authorized under the Leases and Sales of Settled Estates Act, 1856 (*Re Cross's Charity*, 27 Beav. 592); and leases of lands near Leeds were authorized for 999 years, and in perpetuity at fee farm rents (*Re Carr*, 6 W. R. 776), but the Court in that case required evidence that the land could not be beneficially let for a shorter period.

**Fee-farm  
rent.**

(d) A fee-farm rent has been defined as a rent-charge reserved on a grant of lands in fee secured by power of distress, and amounting to at least one-fourth of the value of the lands at the time of the reservation. 1 Bl. Com. ii. p. 37. By sect. 18 of the Settled Estates Act, 1877, the whole or any part of the consideration on a sale under that Act for building purposes may be a fee-farm rent; see *post*, p. 215.

**Covenant  
to repair.**

Where land was granted in fee in consideration of a rent-charge, and of a covenant to build and repair buildings, it was held by the Court of Appeal that the assignee of the grantee of the land was not liable either at law, or in equity, on the ground of notice, to the assignee of the grantee of the rent-

charge on the covenant to repair. *Haywood v. Brunswick Benefit Building Society*, 8 Q. B. D. 403.

**11.** Under a mining lease (e), whether the mines or minerals leased are already opened or in work or not (f), unless a contrary intention is expressed in the settlement, there shall be from time to time set aside, as capital money arising under this Act, part of the rent as follows, namely,—where the tenant for life is impeachable for waste in respect of minerals, three fourth parts of the rent, and otherwise one fourth part thereof, and in every such case the residue of the rent shall go as rents and profits.

Part of mining rent to be set aside.

(e) For definition of “mining lease” and “mining purposes,” see sect. 2, *ante*, p. 21.

Mining lease.

(f) This provision will not apply to leases granted by tenants for life under powers, statutory or otherwise, independent of this Act; see sect. 56, sub-sect. 1, *post*, p. 106. Open mines may be leased by a tenant for life, impeachable for waste, under his general power to grant leases other than mining leases for twenty-one years. *Campbell v. Leach*, 740; *Clegg v. Rowland*, L. R., 2 Eq. 160; see also Co. Lit. 54 b. In such a case the whole of the rent or royalties will belong to the tenant for life. *Daly v. Beckett*, 24 Beav. 114; *Miller v. Miller*, L. R., 13 Eq. 263. Where the tenant for life is without impeachment for waste, it is conceived that he may open mines and grant leases thereof for any term not exceeding twenty-one years, and appropriate the whole rent for his own benefit. See Dav. Conv. iii. p. 279.

Setting aside rent.

A similar provision as to setting aside part of the rent in respect of a statutory mining lease is contained in the Settled Estates Act, 1877, sect. 4, *post*, p. 209.

### *Special Powers.*

**12.** The leasing power of a tenant for life extends to the making of—

Leasing powers for special objects.

- (i.) A lease for giving effect to a contract entered into by any of his predecessors in title for making a lease, which, if made by the pre-

decessor, would have been binding on the successors in title; and

- (ii.) A lease for giving effect to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the settled land; and
- (iii.) A lease for confirming, as far as may be, a previous lease, being void or voidable; but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted, under this Act, or otherwise, as the case may require.

Contracts by predecessors in title.

The effect of this provision appears to be to enable a tenant for life to grant leases to carry out contracts by a testator which could not have been entered into by a limited owner, and which the testator could only enter into as being absolute owner in fee simple of the property contracted to be demised. The qualifying clause at the end of this section evidently only applies to leases made under sub-sect. (iii.)

A testator entered into contracts to grant building leases at a peppercorn rent for the first few years of the term, and died without having granted the leases. He devised the estate in strict settlement, without any power of granting such leases. It was held that, inasmuch as the contracts did not conform to the provisions of the Settled Estates Act, 1856, the leases could not be granted thereunder, and that an application must be made for an Act of Parliament for the purpose. *Cust v. Middleton*, 2 De G. F. & J. 33.

### *Surrenders.*

Surrender and new grant of leases.

**13.—(1.)** A tenant for life may accept, with or without consideration (*g*), a surrender of any lease of settled land, whether made under this Act or not, in respect of the whole land leased, or any part thereof, with or without an exception of all or any of the mines and minerals therein, or in respect of mines and minerals, or any of them.

(2.) On a surrender of a lease in respect of part



only of the land or mines and minerals leased, the rent may be apportioned.

(3.) On a surrender, the tenant for life may make of the land or mines and minerals surrendered, or of any part thereof, a new or other lease, or new or other leases in lots.

(4.) A new or other lease may comprise additional land or mines and minerals, and may reserve any apportioned or other rent.

(5.) On a surrender, and the making of a new or other lease, whether for the same or for any extended or other term, and whether or not subject to the same or to any other covenants, provisions or conditions, the value of the lessee's interest in the lease surrendered may be taken into account in the determination of the amount of the rent to be reserved (*h*), and of any fine to be taken, and of the nature of the covenants, provisions and conditions to be inserted in the new or other lease.

(6.) Every new or other lease shall be in conformity with this Act.

(*g*) In the original draft of the bill it was expressly provided that such consideration if paid in money should be receivable by the tenant for life for his own use. The payment of such a consideration by the surrenderor will generally indicate that the value of the property has depreciated, so that the lessee cannot get any one to take the remainder of the term off his hands at the original rent. In such a case a new lease of the property will probably be at a lower rent than before the surrender. Perhaps the most equitable mode of dealing with such consideration money, in the interests of all parties concerned, would be that its apportionment and application should be left to the judgment of the trustees or of the Court, as provided by sect. 34 with regard to purchase-money paid in respect of a lease or reversion. It is, however, doubtful whether the term "*purchase-money*, with regard to a lease," could be held to include the consideration paid for its surrender.

Consi-  
deration  
paid for  
surrender.

(*h*) This provision gives statutory confirmation to the decision in *Re Rawlins*, L. R., 1 Eq. 286.

*Copyholds.*

Power to  
grant to  
copy-  
holders  
licences for  
leasing (i).

**14.—(1.)** A tenant for life may grant to a tenant of copyhold or customary land, parcel of a manor comprised in the settlement, a licence to make any such lease of that land, or of a specified part thereof, as the tenant for life is by this Act empowered to make of freehold land.

(2.) The licence may fix the annual value whereon fines, fees, or other customary payments are to be assessed, or the amount of those fines, fees, or payments.

(3.) The licence shall be entered on the court rolls of the manor, of which entry a certificate in writing of the steward shall be sufficient evidence.

Customs  
as to  
licences.

(i) By the special customs of some manors, leases without licence are authorized; see *Scriv. Cop.* 5th ed. 330, and *Shelford's Cop.* 154; and according to the custom of some manors, *e.g.* that of Ealing, the lord's power of licence is restricted to leases not exceeding twenty-one years; see *Hanbury v. Litchfield*, 2 Myl. & K. 629. Generally, however, a copyholder who, without licence from the lord, grants a lease for more than a year incurs forfeiture of his tenement. *Doe v. Bousfield*, 6 Q. B. 492.

This section will not probably be extensively applicable in practice, except as regards agricultural land, for copyholders can compel enfranchisement under the Copyhold Acts of 1852 (14 & 15 Vict. c. 53) and 1858 (21 & 22 Vict. c. 94), which is always the advisable course where buildings or extensive improvements are contemplated.

## V.—SALES, LEASES, AND OTHER DISPOSITIONS.

*Mansion and Park.*

Restriction  
as to man-  
sion house,  
park, &c.

**15.** Notwithstanding anything in this Act, the principal mansion house on any settled land, and the demesnes thereof, and other lands usually occupied therewith, shall not be sold or leased by the tenant for life, without the consent of the trustees of the settlement, or an order of the Court (k).

Mansion  
house.

(k) A "mansion house" is defined to be in law simply a

dwellinghouse, Wharton, Law Lex.; and Sir E. Coke, after stating that a mansion or dwellinghouse (*domus mansionalis*) consists of two branches, viz. the inset edifices and the outbuildings which he particularizes, continues, "And albeit every mansion house hath not all these buildings, yet every house for the dwelling and habitation of man is taken to be a mansion house, wherein burglary may be committed." 3 Inst. 64.

"Demesnes" are those parts of the lands of a manor which the lord has not granted out in tenancy, but which are reserved for his own use and occupation. Wharton, Law Lex.; see also *Att.-Gen. v. Parsons*, 2 Cro. & Jer. 279. Demesnes.

In Ireland, the word is in very general use, and has often a wider signification than that given above. In *Doynes v. Campbell* (L. R., 9 C. L. 95), the term "demesne" was held to include a holding surrounded by a wall and containing twenty-five acres, ten of which were under a villa residence, offices, gardens and ornamental grounds, and the remaining fifteen acres were fenced fields attached for pasture.

The word "park" (which occurs only in the heading and marginal note to the section) in its strict legal signification denotes three essential conditions—(i) a grant thereof; (ii) inclosure by pale or wall or hedge; and (iii) beasts of a park, such as buck, &c. *Howard's case*, Cro. Car. 59. Park.

Sir G. Jessel, M. R., has held that marginal notes form part of Acts. *Re Venour*, 2 Ch. D. 525; but see the remarks of L.J.J. Bramwell and James in *Att.-Gen. v. Great Eastern Railway*, 11 Ch. D. 465.

In the memorandum annexed to this Act when introduced in Parliament it was stated that "special protection is provided for the mansion house and park; in proper cases they may be sold, but not by the tenant for life alone; he must get the assent of the trustees or an order of the Court." It would appear that from the terms used, "settled land," "mansion house," "park," and "demesne," that the restriction contained in this section with regard to sale or lease of the mansion house, &c. is intended to apply to large estates. Effect of clause.

But it must be borne in mind that by sect. 63, *post*, p. 115, dispositions by deed or will of land upon trust for sale are made subject to the provisions of this Act, among which is the requirement of the consent of the tenant for life to the exercise by trustees of their powers under a "settlement" (sect. 56, sub-sect. 2, *post*, p. 106). Until, therefore, the terms above referred to are defined by judicial decision, it is to be feared that difficulties and doubts may arise with regard to sales or leases where the powers are exercisable at the discretion of trustees, especially in the case of small holdings where tenants for life may be abroad or not readily ascertained, or incapacitated by old age or otherwise from giving their consents to dealing with the property. Small properties.

Other questions will not improbably arise with regard to the meaning of this section, *e. g.*, as to cases where several estates situate in different counties, or in different parts of the United Kingdom, are comprised in the same settlement, or in several

settlements with similar limitations ; or where, perhaps, the largest estates and usual residence of the tenant for life are in England or Ireland, and the ancestral estate and mansion are in Scotland, which is not within this Act.

*Streets and Open Spaces.*

Dedication  
for streets,  
open  
spaces,  
&c. (l).

**16.** On or in connexion with a sale or grant for building purposes, or a building lease, the tenant for life, for the general benefit of the residents on the settled land, or on any part thereof,—

- (i) May cause or require any parts of the settled land to be appropriated and laid out for streets, roads, paths, squares, gardens, or other open spaces, for the use, gratuitously or on payment, of the public or of individuals, with sewers, drains, watercourses, fencing, paving, or other works necessary or proper in connexion therewith ; and
- (ii) May provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement, or other trustees, or any company or public body, on trusts or subject to provisions for securing the continued appropriation thereof to the purposes aforesaid, and the continued repair or maintenance of streets and other places and works aforesaid, with or without provision for appointment of new trustees when required ; and
- (iii) May execute any general or other deed necessary or proper for giving effect to the provisions of this section (which deed may be inrolled in the central office of the Supreme Court of Judicature) (m), and thereby

declare the mode, terms, and conditions of the appropriation, and the manner in which and the persons by whom the benefit thereof is to be enjoyed, and the nature and extent of the privileges and conveniences granted.

(l) Similar powers of dedication of streets, &c., are given by the Settled Estates Act, 1877, s. 20, to the Court "if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement." Dedication for streets, &c.

This condition is not, it is conceived, excluded by omission from this section, and it may be doubted whether it is not essential to the proper exercise of this power by a tenant for life, who is in regard to such a matter a trustee for all parties interested (sect. 53, *post*, p. 102).

It has been held that under the Leases and Sales of Settled Estate Acts, 1856, the proposed streets must be beneficial to the property in its existing state, or required for houses, whose immediate erection is contemplated. *Re Hurlé*, 2 H. & M. 196. 19 & 20 Vict. c.120.

(m) "Examined copies of the enrolment of deeds required by law to be enrolled are, it appears, sufficient evidence of the originals; but where the enrolment is not compulsory a copy is evidence only as against the parties on whose acknowledgment enrolment was made and their representatives, and the non-production of the original should be accounted for." Enrolment of deeds.

Dart, V. & P. (5th ed.) 313; see also 1 Jarm. Conv. 170.  
A deed duly enrolled has been held to take effect from the date of its execution. *Trye v. Corporation of Gloucester*, 14 Beav. 173.

### *Surface and Minerals apart.*

17.—(1.) A sale, exchange, partition, or mining lease, may be made either of land, with or without an exception or reservation of all or any of the mines and minerals therein, or of any mines and minerals, and in any such case with or without a grant or reservation of powers of working, way-leaves or rights of way, rights of water and drainage, and other powers, easements, rights, and privileges for or incident to or connected with mining purposes, in relation to the settled land, or any part thereof, or any other land. Separate dealing with surface and minerals, with or without way-leaves, &c. (n).

(2.) An exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals.

**Surface.** (n) As to grant of use of surface for working mines sold, see *Re Milward*, L. R., 6 Eq. 248; and see sect. 9, note (a), *ante*, p. 37.

As to power to concur with the owners of other undivided shares in any manner proper for the purposes of this Act, see sect. 19, *post*, p. 47.

### *Mortgage.*

**Mortgage  
for  
equality  
money, &c.**

**18.** Where money is required for enfranchisement, or for equality of exchange or partition, the tenant for life may raise the same on mortgage of the settled land (o), or of any part thereof, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, and the money raised shall be capital money arising under this Act (p).

**Mortgage.** (o) In the Conveyancing Act, 1881, sect. 2 (vi), "mortgage is defined as any charge on any property for securing money or money's worth." This definition extends considerably beyond the usually-accepted signification of the word mortgage, as to which see 4 Com. Dig. tit. Mortgage; Coote on Mortgages, 1. In sect. 50 (4) of this Act "mortgage" is used as distinct from "charge or incumbrance." For ordinary purposes of conveying a mortgage may be considered as a pledge of real or personal estate, evidenced by deed, for securing the payment of money. Dav. Conv. ii. pt. 2.

This power of raising money by mortgage being only given in the event of the requirements specified, it will be the duty of the trustees, or of the Court, as the case may be (see sect. 22, *post*, p. 54), to see that the money is applied to the purpose for which it has been raised.

The receipt in writing of the trustees effectually discharges a mortgagee from being concerned to see that the money advanced by him is wanted for the purposes of this Act. Sect. 40, *post*, p. 83.

(p) Capital money must be applied for the special authorized

object for which it was raised, see sect. 21, *post*, p. 49; and as to charging settled land for improvements, see Improvement of Land Act, 1864, ss. 49—71, *post*, p. 156 *et seq.*

### *Undivided Share.*

19. Where the settled land comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares, the tenant for life of an undivided share may join or concur, in any manner and to any extent necessary or proper for any purpose of this Act, with any person entitled to or having power or right of disposition of or over another undivided share.

Concurrence in exercise of powers as to undivided share.

### *Conveyance.*

20.—(1.) On a sale, exchange, partition, lease, mortgage or charge, the tenant for life may, as regards land sold, given in exchange or on partition, leased, mortgaged or charged, or intended so to be, including copyhold or customary or leasehold land vested in trustees, or as regards easements or other rights or privileges sold or leased, or intended so to be, convey or create the same by deed, for the estate or interest the subject of the settlement, or for any less estate or interest, to the uses and in the manner requisite for giving effect to the sale, exchange, partition, lease, mortgage or charge.

Completion of sale, lease, &c., by conveyance (p).

(2.) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act, is effectual to pass the land conveyed, or the easements, rights or privileges created, discharged

from all the limitations, powers and provisions of the settlement, and from all estates, interests and charges subsisting or to arise thereunder, but subject to and with the exception of—

- (i) All estates, interests and charges having priority to the settlement; and
- (ii) All such other, if any, estates, interests and charges as have been conveyed or created for securing money actually raised at the date of the deed (*q*); and
- (iii) All leases and grants at fee-farm rents or otherwise, and all grants of easements, rights of common, or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the deed, by the tenant for life, or by any of his predecessors in title, or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the successors in title of the tenant for life.

(3.) In case of a deed relating to copyhold or customary land, it is sufficient that the deed be entered on the court rolls of the manor, and the steward is hereby required on production to him of the deed to make the proper entry; and on that production, and on payment of customary fines, fees and other dues or payments, any person whose title under the deed requires to be perfected by admittance shall be admitted accordingly (*r*); but if the steward so requires, there shall also be produced to him so much of the settlement as may be necessary to show the title of the person executing



the deed; and the same may, if the steward thinks fit, be also entered on the court rolls.

(p) The effect of this provision is that the tenant for life may effectually grant, appoint or demise (see Conveyancing Act, 1881, sect. 2 (v)) the settled land in fee, or for any less estate, or for a term of years, without the necessity of the trustees, or any other persons beneficially interested, being parties to the conveyance. In practice, however, where there are trustees of the settlement, it will usually be advisable that they should join in the conveyance to give receipts. Sect. 40, *post*, p. 83. Convey-  
ance.

On an application by a tenant for life under the Leases and Sales of Settled Estates Act, 1856, for a sale of property comprising copyholds, as well as freeholds, where it appeared that the most beneficial mode of carrying out the sale was to enfranchise the copyholds and sell the whole as freeholds, the Court made an order to that effect, and directed that the costs of enfranchisement should be paid out of the proceeds of the sale. *Re Adair*, L. R., 16 Eq. 124. Copyholds.

(q) This sub-section must be read in connection with sect. 50, *post*, p. 100, which provides that a contract by a tenant for life not to exercise his powers under this Act shall be void; but that such provision shall not affect the rights of an assignee for value without his consent. When, therefore, the settled land is subject to a mortgage to secure a loan, or (as it is conceived) to a charge for portions for younger children actually raised under a power in the settlement, and left as a charge on the property, the tenant for life can only convey the land subject to such incumbrances. Charges.

A tenant for life, when intending to deal with the settled land, must give notice to the trustees, if any, of the settlement. Sect. 45, *post*. Notice.

The limitations, powers and provisions of the settlement from which the land conveyed is discharged, will attach to the capital money and income which forms the consideration for the conveyance. Sect. 22 (5).

(r) Copyholds are vested in a purchaser by the surrender of the vendor in person (*Noel v. Weston*, 6 Mad. 50), in pursuance of the covenant to surrender contained in the deed of sale. The effect of this provision seems to be to dispense with the necessity of actual surrender in the case of a sale, &c. of settled copyholds under this Act. Surrender  
of copy-  
holds.

## VI.—INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY.

**21.** Capital money arising under this Act (s),  
subject to payment of claims properly payable

R.

E

Capital  
money  
under Act;

invest-  
ment, &c.  
by trustees  
or Court.

thereout, and to application thereof for any special authorized object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes (namely):

- (i) In investment on Government securities (*t*), or on other securities on which the trustees of the settlement are by the settlement or by law authorized to invest trust money of the settlement (*u*), or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock, of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares, with power to vary the investment into or for any other such securities:
- (ii) In discharge, purchase, or redemption of incumbrances (*v*) affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of landtax, rentcharge in lieu of tithe, crown rent, chief rent, or quit rent, charged on or payable out of the settled land (*w*):
- (iii) In payment for any improvement authorized by this Act (*x*):
- (iv) In payment for equality of exchange or partition of settled land:

- (v) In purchase of the seignory of any part of the settled land, being freehold land, or in purchase of the fee simple of any part of the settled land, being copyhold or customary land (*y*) :
- (vi) In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life (*z*) :
- (vii) In purchase of land in fee simple, or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land :
- (viii) In purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes :
- (ix) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge (*a*) :
- (x) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions, of this Act :

- (xi) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

35 & 36  
Vict. c. 44.

(s) For definition of capital money, see sect. 2, sub-sect. 9, *ante*, p. 20. Money may be raised by mortgage under this Act only for enfranchisement, or equality of exchange, or partition, sect. 18, *ante*, p. 46.

Government  
securities.

"The term 'government securities' is defined as any annuities, exchequer bonds, exchequer bills and other parliamentary securities of the government of the United Kingdom."

(t) Of the government or bank annuities, the Court has generally thought proper to adopt for investments the 3l. per cent. Consolidated Bank Annuities, the fund which, at the time when the rule of the Court was established, was considered, from its low rate of interest, the least likely to be redeemed. "And if a trustee, who has money in hand which he ought to render productive, invest it in this security, he has done his duty, and will not be liable for any subsequent depreciation." *Lewin on Trusts*, p. 278. And see *Clough v. Bond*, 3 M. & Cr. 496; *Holland v. Hughes*, 16 Ves. 114; *Moyle v. Moyle*, 2 R. & M. 716. The Court will, however, on special grounds, invest in other government securities. *Caldecott v. Caldecott*, 4 Mad. 189.

Securities  
authorized  
by the  
settlement.  
Securities  
authorized  
by law.  
22 & 23  
Vict. c. 35.

(u) As to the duties, &c. of trustees with regard to investments authorized by the settlement, see note (k), *post*, p. 85.

By sect. 32 of 22 & 23 Vict. c. 35, it is enacted, that "when a trustee, executor or administrator shall not, by some instrument creating his trust, be expressly forbidden to invest any trust fund or real securities in any part of the United Kingdom, or on the stock of the Bank of England or Ireland, or on East India Stock, it shall be lawful for such trustee, executor or administrator, to invest such trust fund on such securities or stock: and he shall not be liable on that account as for a breach of trust, provided that such investment shall in other respects be reasonable and proper."

This section (which is made retrospective by 23 & 24 Vict. c. 38, s. 12) does not apply where the trust fund is already specifically invested, and there is no power in the settlement to vary securities. *Re Ward*, 2 J. & H. 191.

By 23 & 24 Vict. c. 38, s. 11, and the General Order dated the 1st of February, 1861, made in pursuance of that Act, trustees having power to invest in government or parliamentary securities, may invest "in bank stock, East India Stock, exchequer bills and 2l. 10s. per cent. annuities, and upon mortgage of freehold and copyhold estates respectively in England and Wales, as well as in Consolidated 3l. per cent. Annuities, Reduced 3l. per cent. Annuities, and New 3l. per cent. Annuities."

This power may be exercised notwithstanding prohibitive or restrictive words in the instrument creating the trust. *Re Wedderburn*, 9 Ch. D. 112.

By 30 & 31 Vict. c. 132, after reciting that doubts had arisen as to the legal effect and signification of the words "East India Stock," it is enacted in sect. 1 that the words "East India Stock" in the said Act (22 & 23 Vict. c. 35) shall include and express, as well the East India Stock which existed previously to the 13th of August, 1859, when the said Act received the assent of her Majesty, as East India Stock charged on the revenues of India, and created under and by virtue of any Act or Acts of Parliament which received her Majesty's assent on and after the 13th of August, 1859; and it shall be lawful for every trustee, executor or administrator, to invest any trust fund in his possession, or under his control, in the stock created by the last-mentioned Act or Acts, to the same extent, and for the same purposes and objects, as he can now invest such trust fund in the East India Stock which existed previously to the 13th of August, 1859."

Application of term "East India Stock."

By sect. 2 of the same Act it is enacted that "it shall be lawful for every trustee, executor or administrator to invest any trust fund in his possession, or under his control, in any securities the interest of which is or shall be guaranteed by parliament to the same extent and in the same manner as he may invest such trust fund in such securities as aforesaid."

Securities the interest whereon is guaranteed by Parliament.

Railway stock guaranteed by the Government of India is not within the Act. *Green v. Angell*, W. N., 1867, p. 305.

Lastly, 34 & 35 Vict. c. 47, s. 13, enacts that "a trustee, executor or other person empowered to invest money in public stocks or funds or other government securities may, unless forbidden by the will or other instrument under which he acts, whether prior in date to this act or not, invest the same in consolidated stock" of the Metropolitan Board of Works.

As to the responsibility of trustees with regard to a due exercise of their judgment and discretion with regard to investments authorized by the settlement, see note (c) to sect. 22, *post*, p. 56.

(v) As to the interpretation of incumbrance, see Conveyancing, &c. Act, 1881, s. 2 (vii), and note (h) to sect. 5 of this Act, *ante*, p. 30. The term is not defined in this Act.

Incumbrance.

The words "or other the whole estate the subject of the settlement" apparently apply to settled leaseholds and capital money arising under this act. It would accordingly appear that if the settlement included freeholds and also leaseholds held for a short term of years, the tenant for life would under this section have power to sell the freeholds in order to free the leaseholds from incumbrances. It is however provided by sect. 53, *post*, p. 102, that the tenant for life shall, in exercising any power under this Act, have regard to the interest of all parties interested, and by sect. 44, *post*, p. 87, that the trustees in case of differences may apply to the Court.

Rent-charge.

(w) A rent-charge is a rent issuing out of land, with power of distress, the owner of the rent having no reversion in the land. Woodfall, L. & T. 347; see also Co. Lit. 144.

Crown rents.

A crown rent is, as its name denotes, a rent-charge reserved in respect of a grant by the crown.

Quit rents.

"Rents of assize are the certain established rents of the freeholders and ancient copyholders of a manor which cannot be departed from or varied. Those of such freeholders are frequently called *chief rents*, *reditus capitales*, and both sorts are indifferently denominated '*quit rents*,' *quieti reditus*, because thereby the tenant goes quit and free of all other services." Bl. Comm. ii. 41.

Chief rents.

This clause would apparently authorize the purchase of a fee farm rent, i. e. a rent-charge reserved in respect of a grant in fee; in any case the purchase of such a rent-charge would come under the purchase of "land" authorized by subsection (vii). See definition of land, sect. 2, *ante*, p. 20.

Redemption of charges.

By sect. 45 of the Conveyancing, &c. Act, 1881, power is given to the Copyhold Commissioners (who are constituted the Land Commissioners under this Act, see sect. 48, *post*, p. 96), on the requisition in writing of the owner of the land or of any person interested therein, to certify under their seal the amount in consideration whereof any quit-rent, chief rent or other annual sum issuing out of the land (not being a tithe rent-charge, or rent reserved on a lease or license, or other non-perpetual rent) may be redeemed; and on payment or tender of that amount, after one month's notice, to the person entitled to the rent-charge, the commissioners shall certify that the land has been redeemed, and the land shall be thereby absolutely freed and discharged from the rent. This section does not apply to Ireland.

Improvements.

(x) As to 'improvements' authorized by this Act, see sects. 25—31, *post*, p. 59 *et seq.*

Enfranchisement.

(y) The enfranchisement of copyholds was held to be a proper mode of applying money paid into Court under the Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18). *Re Cheshunt College*, 3 W. R. 638; *Dickson v. Graham*, 25 L. J., Ch. 588.

Enlargement of terms.

(z) Sect. 65 of the Conveyancing, &c. Act, 1881, provides for the enlargement of long terms (of originally not less than 300 years, of which 200 years or more are unexpired) held at nominal rents into estates in fee simple.

(a) As to the necessity for the execution of a disentailing deed in order to entitle a tenant in tail to payment, see note (q), *post*, p. 226.

Regulations respecting investment, devolution, and income of securities, &c.

**22.**—(1.) Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into Court, at the option of the tenant for life (b), and shall be invested or applied

by the trustees, or under the direction of the Court, as the case may be, accordingly.

(2.) The investment or other application by the trustees shall be made according to the direction of the tenant for life (*b*), and in default thereof, according to the discretion of the trustees (*c*), but in the last-mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement; and any investment shall be in the names or under the control of the trustees.

(3.) The investment or other application under the direction of the Court shall be made on the application of the tenant for life, or of the trustees.

(4.) Any investment or other application shall not during the life of the tenant for life be altered without his consent (*d*).

(5.) Capital money arising under this Act while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall, for all purposes of disposition, transmission, and devolution, be considered as land, and the same shall be held for and go to the same persons successively, in the same manner and for and on the same estates, interests, and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement (*e*).

(6.) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement (*e*).

(7.) Those securities may be converted into

money, which shall be capital money arising under this Act.

Payment  
of capital-  
money.

(a) The meaning of this clause would, at first sight, appear to be that this option will be exercisable when there are trustees of the settlement within the meaning of the Act, see sect. 2, *ante*, p. 20; but that when there are no trustees, either an application must be made to the Court under sect. 38, *post*, p. 77, for the appointment of trustees, or that the sale, or other dealing with the settled land, may be effected without their appointment, provided the money be paid into Court. It is, however, open to doubt whether this is the true construction, as sect. 45 would appear to require that there shall in every case be two or more trustees of the settlement, to whom notice must be given of any intention of the tenant for life to exercise his powers of sale, &c., under this Act, and that if they are not in existence, they must be appointed. See *post*, p. 88.

By sect. 39 (1), *post*, p. 82, it is provided that capital money arising under this Act shall not be paid to fewer than two trustees, unless the settlement otherwise provides, and their receipt effectually discharges the payor. Sect. 40, *post*, p. 83. It would not be safe for a purchaser or mortgagee to pay "capital money" either to a sole trustee or to the tenant for life himself, notwithstanding that, by sect. 53, *post*, p. 102, he is to be deemed to be in the position, and to have the duties and liabilities of a trustee for all parties interested under the settlement. Payment into Court exonerates the payor. Sect. 46, sub-sect. 2, p. 90.

An application for leave to pay purchase-money into Court may be made jointly by two or more purchasers. Seton, 1405.

The application should not generally be made until the title has been accepted. Sugd. V. & P. 103; see also *De Visme v. De Visme*, 1 M. & G. 336; *Ruthley v. Gill*, 3 D. & S. 640.

For form of order for payment into Court, see Pemberton on Judgments, p. 463; and as to general procedure and practice of the Court with regard to payment into Court, see Seton, pp. 73—88.

Direction  
of tenant  
for life.

(b) This provision enables a tenant for life to assume the whole power and responsibility with regard to the choice of investments, and to deprive the trustees of any voice in the matter, unless they see fit to apply to the Court under sect. 44, *post*, p. 87, to restrain the tenant for life from applying or investing capital money in a manner which they consider improper and detrimental to the inheritance. See, however, sect. 42, *post*, p. 86, as to the protection of trustees from liability for not making such applications as they might make.

Discretion  
of trustees.

(c) The Court if called upon to direct or sanction an investment will act with strict regard to the interest of all parties interested (*Cockburn v. Peel*, 3 De G., F. & J. 170); but where trustees in the exercise of their discretion have selected an investment, it will be assumed in the absence of proof to the contrary, that they have acted *bonâ fide* and with due regard to the interests alike of the tenant for life and remain-



derman. *Hume v. Richardson*, 4 De G., F. & J. 32. See also note (u), *ante*, p. 53.

(d) The investment may be permanent, and not, as heretofore, merely provisional, until re-investment in land, to be conveyed to the uses or trusts of the settlement, or otherwise applied, as directed by sect. 34 of the Settled Estates Act, 1877. An investment once made, either by the trustees or the Court, may continue throughout the life of the tenant for life, if he so pleases.

Investment.

(e) The effect of these clauses is, as stated in the memorandum to the bill, that the income of the investments goes as the rents of the land, if not sold, would have gone; and the capital devolves to the remainderman and others coming in under the settlement, as if there had been no sale; in other words, the capital is treated for that purpose as land, and not as money.

Devolution of money as land.

**23.** Capital money arising under this Act from settled land in England shall not be applied in the purchase of land out of England, unless the settlement expressly authorizes the same.

Investment in land in England (f).

(f) So also settled land in England may not be given in exchange for land out of England. Sect. 4 (8), *ante*, p. 30.

**24.**—(1.) Land acquired by purchase or in exchange, or on partition, shall be made subject to the settlement in manner directed in this section.

Settlement of land purchased, taken in exchange, &c.

(2.) Freehold land shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which, under the settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging (g).

(3.) Copyhold, customary, or leasehold land shall be conveyed to and vested in the trustees of the settlement on trusts and subject to powers and provisions corresponding, as nearly as the law and circumstances permit, with the uses, trusts, powers

and provisions to, on and subject to which freehold land is to be conveyed as aforesaid; so nevertheless that the beneficial interest in land held by lease for years shall not vest absolutely in a person who is by the settlement made by purchase tenant-in-tail, or in tail male, or in tail female, and who dies under the age of twenty-one years, but shall, on the death of that person under that age, go as freehold land conveyed as aforesaid would go (*h*).

(4.) Land acquired as aforesaid may be made a substituted security for any charge in respect of money actually raised, and remaining unpaid, from which the settled land, or any part thereof, or any undivided share therein, has theretofore been released on the occasion and in order to the completion of a sale, exchange or partition.

(5.) Where a charge does not affect the whole of the settled land, then the land acquired shall not be subjected thereto, unless the land is acquired either by purchase with money arising from sale of land which was before the sale subject to the charge, or by an exchange or partition of land which, or an undivided share wherein, was before the exchange or partition subject to the charge.

(6.) On land being so acquired, any person who, by the direction of the tenant for life, so conveys the land as to subject it to any charge, is not concerned to inquire whether or not it is proper that the land should be subjected to the charge.

(7.) The provisions of this section referring to land extend and apply, as far as may be, to mines

and minerals, and to easements, rights and privileges over and in relation to land.

(g) As to multiplication of charges, see *Hindle v. Taylor*, 5 De G. M. & G. 577.

(h) The effect of this clause is, that if an infant *quasi tenant* in tail of leaseholds leaves issue inheritable under the entail, such issue will take, but if he dies without such issue, then the leaseholds will pass to the remainderman. The corresponding proviso in sect. 4 of the repealed Act, 23 & 24 Vict. c. 145, did not contain the concluding words of this section, directing the leaseholds to go over as freeholds.

As to the history of the doctrine of *quasi* entails, see the judgment of Lord St. Leonards, C. in *Allen v. Allen*, 2 Dr. & War. 337; and as to the construction of dispositions in *quasi* strict settlement, see *Foley v. Burnell*, 1 Bro. C. C. 274. See also Dav. Conv. iii. p. 495.

## VII.—IMPROVEMENTS.

### *Improvements with Capital Trust Money.*

**25.** Improvements authorized by this Act are the making or execution on, or in connection with, and for the benefit of settled land, of any of the following works, or of any works for any of the following purposes, and any operation incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes (namely):—

Description of improvements authorized by act (a).

- (i) Drainage (b), including the straightening, widening, or deepening of drains, streams and watercourses:
- (ii) Irrigation; warping (c):
- (iii) Drains, pipes and machinery for supply and distribution of sewage as manure:
- (iv) Embanking or weiring (d) from a river or lake, or from the sea, or a tidal water:
- (v) Groynes; sea walls; defences against water

- (vi) Inclosing; straightening of fences; re-division of fields:
- (vii) Reclamation; dry warping:
- (viii) Farm roads; private roads; roads or streets in villages or towns:
- (ix) Clearing; trenching; planting:
- (x) Cottages for labourers, farm-servants and artisans, employed on the settled land or not:
- (xi) Farmhouses, offices, and out-buildings, and other buildings for farm purposes:
- (xii) Saw mills, scutch-mills (*e*), and other mills, water-wheels, engine-houses and kilns, which will increase the value of the settled land for agricultural purposes or as woodland or otherwise:
- (xiii) Reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices (*f*), and other works and machinery for supply and distribution of water for agricultural, manufacturing or other purposes, or for domestic or other consumption (*g*):
- (xiv) Tramways; railways; canals; docks (*h*):
- (xv) Jetties, piers and landing places on rivers, lakes, the sea or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes:
- (xvi) Markets and market-places:
- (xvii) Streets, roads, paths, squares, gardens, or

other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connection with the conversion of land into building land (i) :

- (xviii) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making and other works necessary or proper in connection with any of the objects aforesaid :
- (xix) Trial pits for mines, and other preliminary works necessary or proper in connection with development of mines (j) :
- (xx) Reconstruction, enlargement or improvement of any of those works.

(a) The Improvement of Land Act, 1864, s. 9, authorized, subject to the approval of the commissioners, the execution of the improvements specified in clauses i.—xiii. of this section ; also those in clause xv. as regards agricultural purposes. The other improvements here specified are now authorized for the first time. By sect. 30 of this Act, *post*, p. 69, the enumeration of improvements in sect. 9 of the Improvement of Land Act, 1864, is extended so as to comprise all improvements authorized by this Act.

It has been repeatedly held that under the Settled Estates Acts the Court is authorized to lay out the proceeds of the sale of settled land in the erection of new buildings on unsold parts of the settled property no less than in the purchase of land. See *re Newman*, L. R., 9 Ch. A. 681, and the cases there cited. But, generally speaking, in cases not covered by statutory enactment, or by the provisions of a settlement, the Court would not, at the instance of tenants for life, direct even permanent improvements to be made at the expense of the estate, except under special circumstances. *Nairn v. Marjoribanks*, 3 Russ. 582 ; *Dent v. Dent*, 30 Beav. 363 ; *Drake v. Trefusis*, L. R., 10 Ch. A. 364.

It is to be observed that the tenant for life is not by this Act empowered to make ornamental improvements (except public gardens, &c. in connection with building undertakings), nor have trustees generally power to do so. *Bridge v. Brown*, 2 Y. & C., Ch. Ca. 181. But where a tenant for life, under a will, had expended large sums in completing the erection of a

New build-  
ings.

Orna-  
mental  
improve-  
ments.

mansion which had been begun by the testatrix and left unfinished at her death, it was held that the mansion ought to be completed, and a reference was directed to ascertain what money had been properly expended thereon. *Dent v. Dent, ubi supra*. And by the Limited Owners' Residence Act, 1870 (33 & 34 Vict. c. 56), as amended by the Act of 1871 (34 & 35 Vict. c. 84), it is provided that the erection of a mansion house and appurtenances suitable to the estate as a residence for the owner thereof, shall be deemed to be an improvement within the meaning of the Improvement of Land Act, 1864, and by sect. 4 of the Act of 1870, a sum not exceeding two years' net rental of the estate may, subject to the approval of the commissioners, be charged thereon for the purpose of erecting a mansion house, &c.

#### Repairs.

Nothing in this section authorizes the application of capital to defraying the expenses of mere repairs, however necessary or permanent. As to the obligations of a tenant for life with regard to repairs generally, and in particular to the maintenance of improvements, see note to sect. 28, *post*, p. 67.

#### Agricultural drainage. Warping.

(b) The Settled Estates Act, 1877, does not empower the Court to direct the carrying out of drainage for agricultural purposes. *Poynder v. Cook*, 50 L. J., Ch. 753.

#### Weir.

(c) "Warping" is enriching by overflowing with water let in from the sea. Webster, Dict.

(d) A "weir" or "wear" is "a dam to shut up and raise water." Johnson, Dict. "A dam in a river to stop and raise the water for conducting it to a mill or for taking fish." Webster, Dict. The development of fisheries does not, however, appear to be contemplated as one of the improvements authorized by the Act. The Court has sanctioned the application of purchase-money of settled estate to embanking a river, so as to protect an unsold part of the estate. *Re Leadbitter*, 30 W. R. 378.

#### Scutch mill. Sluice.

(e) A "scutch-mill" is a mill for drawing out raw flax and preparing it for sale to spinners and manufacturers.

(f) A "sluice" is a lock or floodgate for letting out dammed-up water. Webster, Dict.

#### Reservoirs Act, 1877.

(g) By the Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877 (40 & 41 Vict. c. 31), s. 5, it is provided; "that the construction or erection of reservoirs or other works of a permanent character for the supply of water to persons residing or engaged in labour on the lands on which such works are situate, or on any other lands settled to the same uses, or for the more convenient or profitable user of such lands, or for the supply of water to any sanitary or other local authority or water company, or for any one or more of such purposes, shall be deemed to be an improvement of land within the meaning of the ninth section of the Improvement of Lands Act, 1864," and accordingly, with the sanction of the commissioners, the cost of such works may be charged on the settled estate. By sect. 6 limited owners may enter into agreements for the supply of water under the Act to local authorities for terms of years, provided that every such agreement be approved by the

Inclosure (Land) Commissioners, and that no premium or benefit of the nature of a premium be reserved thereby by the land owner. By sect. 7 contracts may be entered into between authorized companies and landowners for execution of reservoirs, &c., or for advances for that purpose; and by sect. 8 landowners are empowered to charge their estates with subscriptions for the construction of waterworks by a water company.

As improvements authorized by this Act must be made or executed "on or in connexion with and for the benefit of settled land," it would not appear that tenants for life are hereby empowered to construct reservoirs, &c. for the supply of water to local authorities or water companies; for that purpose recourse must be had to the Reservoirs, &c. Act of 1877.

(A) By sect. 27 of this Act a tenant for life is empowered to concur with any other person (which term includes corporation, see sect. 2, *ante*, p. 22) in executing any improvement authorized by this Act or in contributing to the cost thereof. And in the Improvements of Lands Act, 1864, ss. 78—89, are contained provisions empowering the commissioners to authorise the charging of settled lands with money subscribed for the construction of railways and canals, upon being satisfied that they will, when constructed and open for traffic, effect a permanent increase in the value of the lands. See *post*, pp. 175 *et seq.*

Railways,  
&c.

(i) See sect. 16, *ante*, p. 44, which contains provisions with regard to the appropriation of land for streets, open spaces, &c., caused or required by the tenant for life to be made in connection with a sale or grant for building purposes on a building lease: the parts appropriated may be vested in trustees, and the conditions of the appropriation may be declared by enrolled deed. It appears to be open to doubt whether the provisions referred to apply to streets, &c. made under this section on land not sold, granted, or leased for building purposes.

Streets, &c.

The Court had no power under the old Leases and Sales of Settled Estates Acts to authorize a sale or mortgage of settled land for the purpose of making roads or sewers; and in the absence of enabling provisions in the settlement, a private Act of Parliament must have been obtained. *Venour v. Venour*, 2 Ch. D. 522. By sect. 21 of the Settled Estates Act, 1877, *post*, p. 216, the Court has power to order the expenses incidental to such works to be raised by sale or mortgage of, or a charge on, all or any part of the settled land. This Act does not authorize the raising of money for improvements by mortgage. See sect. 18, *ante*, p. 46.

(j) A tenant for life is, by sect. 6, *ante*, p. 31, empowered to grant leases for mining purposes, including the sinking of mines which have not previously been worked. By the application of capital money to making trial pits and executing other preliminary works, he will be enabled to open mines and sell or lease them as going concerns. This Act does not empower a tenant for life impeachable for waste to open mines in order to work them himself. A tenant for life without im-

Mines.

peachment of waste has the right, independently of this Act, to open mines and appropriate the profits for his own benefit. Co. Litt. 220 a.

Approval  
by Land  
Commis-  
sioners of  
scheme  
for im-  
provement  
and pay-  
ment  
there-  
on (k).

**26.—(1.)** Where the tenant for life is desirous that capital money arising under this Act shall be applied in or towards payment for an improvement authorized by this Act, he may submit for approval to the trustees of the settlement, or to the Court (*l*), as the case may require, a scheme for the execution of the improvement, showing the proposed expenditure thereon.

(2.) Where the capital money to be expended is in the hands of trustees, then, after a scheme is approved by them, the trustees may apply that money in or towards payment for the whole or part of any work or operation comprised in the improvement, on—

- (i) A certificate of the land commissioners certifying that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which certificate shall be conclusive in favour of the trustees as an authority and discharge for any payment made by them in pursuance thereof; or on
- (ii) A like certificate of a competent engineer or able practical surveyor nominated by the trustees and approved by the commissioners, or by the Court, which certificate shall be conclusive as aforesaid; or on
- (iii) An order of the Court directing or authorizing the trustees to so apply a specified portion of the capital money.



(3.) Where the capital money to be expended is in Court, then, after a scheme is approved by the Court, the Court may, if it thinks fit, on a report or certificate of the commissioners, or of a competent engineer or able practical surveyor, approved by the Court, or on such other evidence as the Court thinks sufficient, make such order and give such directions as it thinks fit for the application of that money, or any part thereof, in or towards payment for the whole or part of any work or operation comprised in the improvement.

(k) See the provisions with regard to applications to the commissioners, and their proceedings with regard to improvements contained in the Improvement of Land Act, 1864, *post*, pp. 128 *et seq.* These provisions are extended so as to apply to all Acts relating to improvements of settled land. See sect. 48, *post*, p. 97.

(l) The scheme will be submitted to the Court when the capital money has been paid into Court, either at the option of the tenant for life, instead of to the trustees, under sect. 22 (1), *ante*, p. 54, or where there are no trustees of the settlement.

**27.** The tenant for life may join or concur with any other person (*m*) interested in executing any improvement authorized by this Act, or in contributing to the cost thereof.

Concurrence in improvements.

(*m*) Person includes corporation. See sect. 2, *ante*, p. 22.

As to the powers of limited owners to contribute towards the construction of railways, canals, and waterworks, by taking shares in companies, and charging the amount on the settled land, see the Improvement of Land Act, 1864, ss. 78—89, *post*, pp. 175 *et seq.*, and the Limited Owners Reservoirs, &c. Act, 1877, s. 8; and see notes to sect. 25, *ante*, p. 62.

**28.—(1.)** The tenant for life, and each of his successors in title (*n*) having, under the settlement, a limited estate or interest only in the settled land, shall, during such period, if any, as the land commissioners by certificate in any case

Obligation on tenant for life and successors to maintain, insure, &c.

prescribe, maintain and repair, at his own expense, every improvement executed under the foregoing provisions of this Act, and where a building or work in its nature insurable against damage by fire is comprised in the improvement, shall insure and keep insured the same, at his own expense, in such amount, if any, as the commissioners by certificate in any case prescribe (o).

(2.) The tenant for life, or any of his successors as aforesaid, shall not cut down or knowingly permit to be cut down, except in proper thinning, any trees planted as an improvement under the foregoing provisions of this Act.

(3.) The tenant for life, and each of his successors as aforesaid, shall from time to time, if required by the commissioners, on or without the suggestion of any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or otherwise, report to the commissioners the state of every improvement executed under this Act, and the fact and particulars of fire insurance, if any.

(4.) The commissioners may vary any certificate made by them under this section, in such manner or to such extent as circumstances appear to them to require, but not so as to increase the liabilities of the tenant for life, or any of his successors as aforesaid.

(5.) If the tenant for life, or any of his successors as aforesaid, fails in any respect to comply with the requisitions of this section, or does any act in contravention thereof, any person having, under the settlement, any estate or interest in the

settled land in possession, remainder, or reversion, shall have a right of action, in respect of that default or act, against the tenant for life; and the estate of the tenant for life, after his death, shall be liable to make good to the persons entitled under the settlement any damages occasioned by that default or act.

(n) The words "the tenant for life and each of his successors in title" here mean the tenant for life, or other limited owner, for the time being in possession of the settled land. See sect. 10 (2), *ante*, p. 38. Successors in title.

(o) It is to be observed that the obligation to maintain, &c., imposed by this section on tenants for life, is confined to "improvements" effected with capital money under this Act. A tenant for life is generally under no obligation to execute repairs of the settled property (except where directed to repair by the instrument creating the trust: *Woodhouse v. Walker*, 5 Q. B. D. 404), nor can he claim to be repaid out of the estate for his outlay in such repairs, however essential and permanent to the preservation of the property. See *Floyer v. Bankes*, L. R., 8 Eq. 115, where expenses of drainage and rebuilding houses were disallowed; and see *Re Leigh*, L. R., 6 Ch. A. 887; *Drake v. Trefusis*, L. R., 10 Ch. A. 364. A tenant for life may cut timber to be employed in repairs, but he cannot sell timber in order to defray out of the purchase-money the cost of repairs, or to recoup himself for money so laid out. Co. Litt. 53, 54; see also *Duke of Marlborough v. St. John*, 5 De G. & Sm. 181. And see note (r) to sect. 29, *infra*. Obligation to repair.

As to the powers and proceedings of the commissioners with regard to insurance and maintenance of buildings erected as improvements, see Improvement of Land Act, 1864, ss. 72-77, *post*, pp. 170 *et seq.*

### *Execution and Repair of Improvements.*

29. The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land (p), and all persons employed by or under contract with the tenant for life, or any such successor, may from time to time enter on the settled land (q), and, without impeachment of waste by any remainderman or reversioner (r), thereon Protection as regards waste in execution and repair of improvements.

execute any improvement authorized by this Act, or inspect, maintain, and repair the same, and, for the purposes thereof, on the settled land, do, make, and use all acts, works, and conveniences proper for the execution, maintenance, repair, and use thereof, and get and work freestone, limestone, clay, sand, and other substances, and make tramways and other ways, and burn and make bricks, tiles, and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament.

**Limited estate.**

(p) It is to be presumed that this estate or interest must be in possession. See note (n) to sect. 28, *ante*, p. 67.

(q) Where for the purpose of effecting improvements it is necessary to enter and execute works upon adjoining lands belonging to other owners, proceedings to obtain authority for such entry must be taken, as directed by sect. 33 of the Improvement of Land Act, 1864, *post*, p. 144.

**Waste.**

(r) In most settlements of real property by deed or will, estates for life are limited *without impeachment of waste*, so as to enable the tenant for life to cut down timber, and open mines, &c., and appropriate the proceeds to his own use and benefit. Co. Litt. 220 a. This is almost invariably the case with regard to settlements of large estates, to which the provisions of this section would appear principally to apply. "The clause *without impeachment of waste*, gives a power to the lessee which will produce an interest in him if he executes his power during the privity of his estate." *Lewis Bowle's case*, 11 Rep. 79 b.

Waste is of three kinds—(i) voluntary; (ii) permissive; (iii) equitable.

**Voluntary waste.**

(i) Voluntary or actual waste is the destruction or alteration of a material part of the inheritance, *e. g.* pulling down houses, or displacing fixtures, "digging for gravell, lime, clay, brick, coale, or the like, hidden in the earth, and were not open when the tenant came in, is wast" (Co. Lit. 53 b); but if the mines or quarries have been worked before the commencement of his estate or term, he may continue the working. *Elias v. Snowdon Slate Quarries Co.*, 4 App. Cas. 454. So, also, cutting down timber, or other trees planted for shelter, or fruit trees, and ploughing up pasture. *Ibid.*; and see Com. Dig. *Waste*.

**Permissive waste.**

(ii) Permissive waste is neglect of repairs, as to which, see note (o), *ante*, p. 67.

The Courts will not generally interfere against mere permissive waste (*Wood v. Gaynon*, Amb. 395), unless an obligation to repair is imposed by the settlement or lease. *Re Skingley*, 3 Mac. & G. 221; *Woodhouse v. Walker*, 5 Q. B. D. 404.

(iii) Equitable waste is the misuse by a tenant for life not impeachable for waste, of his powers and privileges, so as, whether through malice, caprice, or extravagance, to cause destruction or spoliation to the inheritance. The leading precedent on this subject is that of *Vane v. Lord Barnard* (2 Vern. 738), where the defendant was restrained from pulling down Raby Castle. Under the head of equitable waste will come pulling down farm houses and grubbing up woods (*Aston v. Aston*, 1 Ves. sen. 265), and cutting down ornamental timber (*Marquis of Downshire v. Lady Sandys*, 6 Ves. 107; *Ford v. Tynte*, 2 De G. J. & S. 127; *Bubb v. Yelverton*, L. R., 10 Eq. 465). See as to timber, note (x) to sect. 35, *post*, p. 74; and see generally as to equitable waste, Dav. Conv. iii. pp. 279 *et seq.*, and the cases collected in the notes to *Garth v. Cotton*, 1 L. C. Eq. 817 *et seq.*

By 36 & 37 Vict. c. 66, s. 25, sub-s. 3, it is enacted that, "an estate for life without impeachment of waste shall not confer, or be deemed to have conferred, upon a tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate."

A tenant impeachable for waste may "dig gravell or clay for the reparation of the house, as well as he may take convenient timber trees" for repairs. Co. Litt. 53 b. The effect of this section is thus merely to extend the right of a tenant for life impeachable for waste, whereby he is entitled to use timber, stone, &c., growing or found on the estate for repairs, so as to empower him to employ such materials in the construction, execution and maintenance of *improvements* authorized by this Act.

Equitable waste.

### *Improvement of Land Act, 1864.*

**30.** The enumeration of improvements contained in section nine of the Improvement of Land Act, 1864, is hereby extended so as to comprise, subject and according to the provisions of that Act, but only as regards applications made to the Land Commissioners after the commencement of this Act, all improvements authorized by this Act (s).

Extension of 27 & 28 Vict. c. 114, s. 9.

(s) As to improvements authorized by this Act, see sect. 25, *ante*, p. 59.

## VIII.—CONTRACTS.

**31.—(1.)** A tenant for life—

(i) May contract to make any sale, exchange, partition, mortgage, or charge; and

Power for tenant for life to enter into contracts (t).

- (ii) May vary or rescind, with or without consideration, the contract, in the like cases and manner in which, if he were absolute owner of the settled land, he might lawfully vary or rescind the same, but so that the contract as varied be in conformity with this Act; and any such consideration, if paid in money, shall be capital money arising under this Act; and
  - (iii) May contract to make any lease; and in making the lease may vary the terms, with or without consideration (*u*), but so that the lease be in conformity with this Act; and
  - (iv) May accept a surrender of a contract for a lease, in like manner and on the like terms in and on which he might accept a surrender of a lease; and thereupon may make a new or other contract, or new or other contracts, for or relative to a lease or leases, in like manner and on the like terms in and on which he might make a new or other lease, or new or other leases, where a lease had been granted; and
  - (v) May enter into a contract for or relating to the execution of any improvement authorized by this Act, and may vary or rescind the same; and
  - (vi) May, in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Act, and may vary or rescind the same.
- (2.) Every contract shall be binding on and

shall enure for the benefit of the settled land, and shall be enforceable against and by every successor in title for the time being of the tenant for life, and may be carried into effect by any such successor; but so that it may be varied or rescinded by any such successor, in the like case and manner, if any, as if it had been made by himself.

(3.) The Court may, on the application of the tenant for life, or of any such successor, or of any person interested in any contract, give directions respecting the enforcing, carrying into effect, varying, or rescinding thereof (v).

(4.) Any preliminary contract under this Act for or relating to a lease shall not form part of the title or evidence of the title of any person to the lease, or to the benefit thereof.

(t) Notice is to be given to the trustees of the settlement a month previous to making a contract for sale, exchange, partition, lease, mortgage, or charge. Sect. 45, *post*, p. 88.

Notice to trustees.

(u) It is to be observed that no provision is here expressed with regard to consideration money paid for variation of the terms of a lease. Where moneys were paid in consideration of the waiver by trustees of restrictive covenants in grants of settled land made by them, it was held that the tenant for life was entitled to the benefit of the consideration. *Earl Cowley v. Wellesley*, L. R., 1 Eq. 660.

Consideration.

(v) By sub-sect. (1) power is given to the tenant for life to vary or rescind contracts; but, under this sub-section, on his proceeding to exercise this power, or to enforce and carry into effect a contract as it stands, he or his successor, or any person interested in the contract, may apply to the Court to interfere in the matter. It would, therefore, appear that, under the terms of this provision, it would be competent for the trustees of the settlement, or a remainderman or reversioner, to invoke the aid of the Court for the purpose of varying or rescinding a contract detrimental to the inheritance, *e. g.*, for the improvident sale of land, which, if retained, will in all reasonable probability increase in value when sold hereafter for building purposes.

Application to Court.

Under the Settled Estates Act, 1877, s. 24, *post*, p. 220, it has been held that a person whose interest under the settlement is remote cannot oppose a sale. *Re Spurway*, 10 Ch. D. 230.

## IX.—MISCELLANEOUS PROVISIONS.

Applica-  
tion of  
money in  
Court  
under  
Lands  
Clauses  
and other  
Acts (t).

**32.** Where, under an Act incorporating or applying, wholly or in part, the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, or under the Settled Estates Act, 1877, or under any other Act, public, local, personal, or private, money is at the commencement of this Act in Court, or is afterwards paid into Court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then, in addition to any mode of dealing therewith authorized by the Act under which the money is in Court, that money may be invested or applied as capital money arising under this Act, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and (notwithstanding anything in this Act) according to the same procedure, as if the modes of investment or application authorized by this Act were authorized by the Act under which the money is in Court.

Payment  
into Court.  
8 Vict.  
c. 18.

(t) As to payment into Court under the Acts above referred to, and the application of moneys so paid, see Lands Clauses Consolidation Act, 1845, s. 69, and the notes thereon in Morgan, p. 36. See also the Settled Estates Act, 1877, ss. 34—36, *post*, p. 225.

Applica-  
tion of  
money in  
hands of  
trustees  
under  
powers of  
settle-  
ment (u).

**33.** Where, under a settlement, money is in the hands of trustees, and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing therewith as the trustees have independently of this Act, they may, at the option of the tenant for life,



invest or apply the same as capital money arising under this Act.

(u) As to the duties and powers of trustees having money in their hands to be laid out in purchase of land, see *Lewin on Trusts*, ch. xix. p. 452 (7th Edition).

**34.** Where capital money arising under this Act is purchase money paid in respect of a lease for years, or life, or years determinable on life, or in respect of any other estate or interest in land less than the fee simple, or in respect of a reversion dependent on any such lease, estate, or interest, the trustees of the settlement or the Court, as the case may be, and in the case of the Court on the application of any party interested in that money, may, notwithstanding anything in this Act, require and cause the same to be laid out, invested, accumulated, and paid in such manner as, in the judgment of the trustees or of the Court, as the case may be, will give to the parties interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, interest, or reversion in respect whereof the money was paid, or as near thereto as may be.

Applica-  
tion of  
money  
paid for  
lease or  
rever-  
sion (v).

(v) As to fines taken on a grant of a lease under this Act, see note (r), *ante*, p. 33. As to consideration for acceptance of surrender, see note (g), *ante*, p. 41.

**35.—(1.)** Where a tenant for life (w) is impeachable for waste in respect of timber (x), and there is on the settled land timber ripe and fit for cutting, the tenant for life, on obtaining the consent of the trustees of the settlement or an order of the Court, may cut and sell that timber, or any part thereof.

Cutting  
and sale  
of timber,  
and part of  
proceeds to  
be set  
aside.

(2.) Three fourth parts of the net proceeds of the sale shall be set aside as and be capital money arising under this Act, and the other fourth part shall go as rents and profits.

Infant  
tenant for  
life.

(w) Where the tenant for life, or other limited owner, is an infant, this power may be exercised by the trustees, or, on an application for the purpose, may be made to the Court by the guardian or next friend of the infant. Sect. 60 (1), *post*, p. 111. See as to married women, sect. 61; and as to lunatics, sect. 62.

Timber.

(z) "Oak, ash and elme, these be timber trees in all places" (Co. Litt. 53 a); but other trees may also be regarded as timber by the custom of particular districts, such as beech, hornbeam, whitethorn and blackthorn, and even some fruit-trees, such as chesnut and walnut. *Duke of Chandos v. Talbot*, 2 P. Wms. 606. No trees, however, are timber till they are of twenty years' growth. *Foster v. Lennard*, Cro. Eliz. 1. "As a general rule, pollards would seem not to be timber: if sound, however, they may be timber by custom." Dart, V. & P. 122.

Although (except as empowered by this section) a tenant for life impeachable for waste may not generally cut timber, unless for repairs, he may cut underwood in due course (*Pigot v. Bullock*, 1 Ves. jun. 479; *Brydges v. Stephens*, 6 Madd. 279); and, it has been held, that the produce of the sale, not only of underwood, but of timber cut periodically in regular course of thinning, was to be treated as income. *Bagot v. Bagot*, 34 Beav. 509; *Earl Cowley v. Wellesley*, L. R., 1 Eq. 656.

When the tenant for life is impeachable for waste, timber improperly cut or blown down belongs at law absolutely to the owner of the first vested estate of inheritance; but where it is proper to cut timber for the preservation of remaining trees, or for other special reason, and the tenant for life in a properly constituted suit gets an order from the Court to cut it down, then the Court will order the proceeds to be invested, and the income to be paid to the successive owners of the estate until there is an absolute estate of inheritance. *Waldo v. Waldo*, 7 Sim. 107; *Jodrell v. Jodrell*, L. R., 7 Eq. 461; *Honeywood v. Honeywood*, L. R., 18 Eq. 306. If, however, among such successive owners there is a tenant for life without impeachment of waste, the capital will, on his coming into possession, belong absolutely to him. *Lord Lovat v. Duchess of Leeds*, 2 Dr. & Sm. 75; *Lowndes v. Norton*, 6 Ch. D. 139.

Where a tenant for life is without impeachment of waste, he may cut timber, other than ornamental timber, at his pleasure, and take the proceeds of sale for his own benefit (*Lewis Bowle's case*, 11 Rep. 79 (6)); but his right of property does not accrue until the timber is actually severed from the land. Hence, formerly where trustees under a power sold an estate without the timber, and the tenant for life being with-

out impeachment of waste sold the timber uncut for his own benefit, it was held that the power was not well exercised. *Cholmeley v. Paxton*, 3 Bing. 207; 5 Bing. 48; *S. C.*, sub nom. *Cockerell v. Cholmeley*, 10 Barn. & Cr. 564; 3 Russ. 565; 1 Russ. & My. 418; 1 Cl. & F. 60. See also *Craig on Trees*, 64. But by sect. 13 of Lord St. Leonards' Act, it is enacted, that "Where under a power of sale a *bond fide* sale shall be made of an estate with the timber thereon, or any other articles attached thereto, and the tenant for life, or any other party to the transaction, shall by mistake be allowed to receive for his own benefit a portion of the purchase-money as the value of the timber or other articles, it shall be lawful for the Court of Chancery, upon any bill or claim, or application in a summary way, as the case may require or permit, to declare that upon payment by the purchaser, or the claimant under him, of the full value of the timber and articles at the time of sale, with such interest thereon as the Court shall direct, and the settlement of the said principal moneys and interest, under the direction of the Court, upon such parties as in the opinion of the Court shall be entitled thereto, the said sale ought to be established, and upon such payment and settlement being made accordingly, the Court may declare that the said sale is valid, and thereupon the legal estate shall vest and go in like manner as if the power had been duly executed, and the costs of the said application, as between solicitor and client, shall be paid by the purchaser or the claimant under him."

22 & 23  
Vict. c. 35.

A tenant for life, impeachable for waste, may cut and use timber for repairs, but he is not entitled to sell it and apply the proceeds for repairs (*Co. Litt.* 53, 54); and, by sect. 29, *ante*, p. 67, he is empowered for the purpose of execution and maintenance of improvements, to cut and use timber and other trees not planted or left standing for shelter or ornament. He may cut down and sell trees, other than timber trees or trees planted for shelter or ornament (*Phillipps v. Smith*, 14 M. & W. 589); but sect. 28, *ante*, p. 65, forbids the cutting down of trees planted as an improvement, except in proper thinning.

Repairs.

As to cutting ornamental timber and waste generally, see note to sect. 29, *ante*, p. 67.

**36.** The Court may, if it thinks fit, approve of any action, defence, petition to parliament, parliamentary opposition, or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement (*y*), and may direct that any costs, charges or expenses incurred or to be in-

Proceedings for protection or recovery of land settled or claimed as settled.

curred in relation thereto, or any part thereof, be paid out of property subject to the settlement (z).

Protection  
of estate.

(y) This section virtually re-enacts the provisions with regard to proceedings for the protection of the estate which was contained in sect. 17 of the Settled Estates Act, 1877, which section is repealed by sect. 64 of this Act, *post*, p. 120. The power of sanction is by this section expressly extended to proceedings "taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement."

Costs.

(z) The Court may, if it sees fit, order the costs of bringing or defending an action for the protection of the estate to be paid out of the estate, although the sanction of the Court has not been previously obtained. *Re Earl de la Warr*, 16 Ch. D. 587.

Trustees were held to be justified in paying costs incurred by the tenant for life in proceedings instituted to prevent the construction of a sewage farm so as to cause a nuisance to the estate, though the sanction of the Court to the proceedings had not been obtained. *Re Willan*, 45 L. T. 745.

For form of order authorizing the costs of litigation for the protection of trust property to be paid thereout, see *Re Lord Rivers*, 16 Ch. D. 589.

Compromise.

As to compromise of actions with regard to trust property, see *Wiles v. Gresham*, 5 De G. M. & G. 770; *Ex parte Ogle*, L. R., 8 Ch. A. 711.

Heir-  
looms (a).

**37.—(1.)** Where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of twenty-one years, or so as otherwise to vest in some person becoming entitled to an estate of freehold of inheritance in the land, a tenant for life of the land may sell the chattels or any of them.

(2.) The money arising by the sale shall be capital money arising under this Act, and shall be paid, invested or applied and otherwise dealt with in like manner in all respects as by this Act directed with respect to other capital money arising under this Act, or may be invested in the purchase of other chattels, of the same or any other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold.

(3.) A sale or purchase of chattels under this section shall not be made without an order of the Court.

(a) This section was inserted in the Act during its consideration by the House of Commons, and was probably suggested by the recent sales of the Sunderland Library under the Blenheim Settled Estates Act, 43 & 44 Vict. (Private Act) ch. i., and of the pictures and other heirlooms from Hamilton Palace under the Duke of Hamilton's Settled Estates Act of the present year.

Heirlooms.

See, as to the construction of trusts of chattels to follow the limitations of real estate, *Lord Scarisdale v. Curzon*, 1 J. & H. 40; *Hogg v. Jones*, 32 Beav. 45; *Harrington v. Harrington*, L. R., 5 H. L. 87; *Martelli v. Holloway*, *ib.* 532; and see *Dav. Conv.*, iii., p. 624, where the forms of such trusts are considered.

Trusts of chattels.

## X.—TRUSTEES.

38.—(1.) If at any time there are no trustees of a settlement within the definition in this Act, or where in any other case it is expedient, for purposes of this Act, that new trustees of a settlement be appointed, the Court may, if it thinks fit, on the application of the tenant for life or of any other person having, under the settlement, an estate or interest in the settled land, in possession, remainder, or otherwise, or, in the case of an infant, of his testamentary or other guardian, or next friend, appoint fit persons to be trustees under the settlement for purposes of this Act (b).

Appointment of trustees by Court.

(2.) The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the appointment of new trustees, the personal representatives or representative for the time being of the last surviving or continuing trustee, shall for purposes of this

## Act become and be the trustees or trustee of the settlement.

Definitions.

(b) For definition of "settlement" and "trustee," see sect. 2 (1), (6), *ante*, pp. 19, 20.

Appointment of trustees.

The powers given by this section apply to cases (i) where there are no trustees of the settlement, whether originally any trustees were appointed or not, and (ii) where "in any other cases it is expedient for the purposes of this Act that new trustees of a settlement shall be appointed."

Where none existing.

(i) By the Trustee Act, 1850, s. 32, the Court was empowered to appoint trustees "either in substitution for or in addition to any existing trustee or trustees." It was doubted whether under this Act the Court could appoint trustees where there were none "existing" (see *Re Tyler*, 5 De G. & Sm. 56); but by the Extension Act, 1852, s. 29, the Court was expressly empowered to appoint a new trustee or new trustees, whether there be any "existing" trustees or trustee at the time of making the order.

It has been repeatedly held that the Court had, under these Acts, jurisdiction to appoint trustees of a *will* where none had been originally appointed by the testator. See *Dodkin v. Brunt*, L. R., 6 Eq. 580; *Re Davis*, L. R., 12 Eq. 214. And where a fund was standing in the books of the Bank of England in the name of an incorporate body which had ceased to exist, the Court, by a decree intitled "In the matter of the Trustee Act, 1850," appointed two trustees, and directed the transfer of the fund. *King of Hanover v. Bank of England*, L. R., 8 Eq. 350.

Whenever expedient.

(ii) The words "whenever it shall be expedient" occur in sect. 32 of the Trustee Act, 1850, and have been held not to authorise the Court to remove a trustee who is willing to act (*Re Hodson*, 9 Hare, 118; *Re Hartley*, 2 De G. & Sm. 67); and on an application to appoint a new trustee in the place of one declining to act, the latter should formally consent to the application. *Re Garty*, 3 N. R. 636.

Nor do these words give the Court jurisdiction to appoint new trustees where there is a power for that purpose in the settlement, even though the donee of the power is about to exercise it corruptly. *Re Hodson*, *ubi supra*.

The Court will not generally entertain an application for the appointment of new trustees where there is a statutory power applicable for that purpose. *Re Soulby*, 21 W. R. 256; *Re Gibbon*, 30 W. R. 287.

Appointment under 44 & 45 Vict. c. 41.

By the Conveyancing Act, 1881, s. 31 (1), it is enacted that "where a trustee, either original or substituted, and whether appointed by the Court or otherwise, is dead or remains out of the United Kingdom for more than 12 months, or desires to be discharged from the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for this purpose by the settlement, if any, creating

the trust, or if there be no such person, or no such person willing and able to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person or other persons to be a trustee in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing, or being unfit, or being incapable as aforesaid."

These powers apply to trusts created either before or after the commencement of the Act (see sub-sect. 8), and are in substitution of the similar powers contained in the repealed Trustees and Mortgagees Act, 1860, s. 27. They closely correspond to the powers of appointing new trustees usually contained in settlements as drawn by conveyancers, and will no doubt be extensively employed in practice.

The events under which trustees can thus be appointed, without the necessity of an application to the Court, are as follows, viz. where a trustee (i) is dead, (ii) is abroad for twelve months, (iii) desires to be discharged, (iv) refuses to act, (v) is unfit, (vi) is incapable.

(i) This case includes the case of a person nominated trustee in a will, but dying before the testator. See Conveyancing Act, 1881, s. 31 (6). (i) Death.

(ii) Under the Trustees and Mortgagees Act, it was held, that residence abroad, unless permanent, was no disqualification. *Re Moravian Society*, 26 Beav. 101. The power arises on the expiration of the statutory term of absence. Where it is desired to appoint a new trustee in the place of a trustee out of the jurisdiction, it is not necessary to serve notice on the latter. *Re Pye's Trusts*, 42 L. T. 247. (ii) Residence abroad.

(iii) Provided that there are two continuing trustees, it is not necessary that a successor be appointed in the room of a trustee desiring to be discharged. Conv. Act, 1881, s. 32 (1). By sect. 39 of this Act, it is provided that capital money shall not be paid to less than two trustees, unless the settlement authorizes payment to one trustee. (iii) Desire to be discharged.

(iv) "Refusing to act" includes the case of a trustee who has accepted, and acted in the trusts of the settlement, but refuses to act any longer. *Re Woodgate*, 5 W. R. 448; *Re Armstrong*, *ib.* (iv) Refusing to act.

Where a trustee objected to act with his co-trustee, and paid the trust fund into Court under the Trustee Relief Act, it was held that such payment constituted a refusal to act, and that the appointment of a new trustee in the place of the one so "refusing" was good. *Re Williams*, 4 K. & J. 87; but see *Pepper v. Tackey*, 2 Jo. & Lat. 95, where the Court declined to transfer a trust fund under 1 Will. 4, c. 60, where a trustee refused to concur in an act which he considered improper.

(v) Unfitness will include conviction for felony (*Turner v. Maule*, 15 Jur. 761), outlawry (*Re Watts*, 9 Hare, 106), absconding on a criminal charge (*Millard v. Eyre*, 2 Ves. jun. 94), using the trust property for the trustee's own advancement or benefit (*Ex parte Phelps*, 9 Mod. Rep. 357), committing a breach of trust (*Ex parte Reynolds*, 5 Ves. 707), or other serious (v) Unfitness.

In what events.

(i) Death.

(ii) Residence abroad.

(iii) Desire to be discharged.

(iv) Refusing to act.

10 & 11 Vict. c. 96.

misconduct (*Buckeridge v. Glasse*, Cr. & Ph. 126); also vindictive, corrupt or improper motives affecting directly the conduct of the trust, but not general hostility towards a *cestui que trust* (*Earl of Portsmouth v. Fellowes*, 5 Madd. 450); bankruptcy, whenever the nature of the trust is such that the bankrupt has to receive or deal with the trust property, so that he can misappropriate it (*Re Barker*, 1 Ch. D. 43: see, however, as to special circumstances under which a bankrupt trustee has been retained, there being no imputation on his honesty, *Re Bridgman*, 1 Dr. & Sm. 164); composition with creditors (*Re Adams*, 12 Ch. D. 634); the marriage of a *fême trustee* to a foreigner (*Lake v. De Lambert*, 4 Ves. 592). In many of these cases, however, points of doubt and difficulty will arise which will render it necessary or advisable to apply to the Court under this section, or to bring an action as circumstances may require.

(vi) Incapability.

(vi) "Incapacity has reference to personal incapacity." *Re Watts*, 9 Hare, 108, per Turner, V.-C. It will include lunacy. *Re Boyce*, 12 W. R. 359; *Re Chauncey*, 14 W. R. 849. Where a trustee became of unsound mind, but was not so found by inquisition, the appointment of a new trustee in his place was upheld. *Re East*, L. R., 8 Ch. A. 735. Infancy has, also, been regarded as constituting incapability, so as to empower the Court to appoint a new trustee in the place of an infant nominated by a testator. *Re Gartside*, 1 W. R. 196; *Re Porter*, 2 Jur., N. S. 349. But in *Re Shelmerdine* (33 L. J., Ch. 474), the order was made without prejudice to the liberty of the infant to be restored as trustee when he should come of age. Where, therefore, it is desired to appoint a new trustee in place of an infant, it will generally be advisable to apply to the Court under the present section.

Appointment by the Court.

Where neither the terms of the settlement nor statutory powers, with regard to appointment of trustees, apply to the circumstances of the particular case, the Court will appoint. *Re Woodgate*, 5 W. R. 448; *Travis v. Illingworth*, 2 Dr. & Sm. 345; and see *Re Dawson*, 3 N. R. 397, where the trustee was from ill-health unequal to the exertion of signing necessary papers connected with the trust; in the report of this case the approved minutes are set out at length.

16 & 17 Vict. c. 70.

Where the donee of the power is a lunatic, application to the Court may be made under the Lunacy Regulation Act, 1853, to authorize the committee to appoint. *Re Boumer*, 3 De G. & J. 658; and see *Re Parker*, 32 Beav. 580, when the Court refused to appoint a new trustee until a committee had been appointed and served with the petition. The Court has jurisdiction to make the appointment when the donee of the power is a lunatic, whether so found by inquisition (*Re Sparrow*, L. R., 5 Ch. A. 662) or not. *Re Vickers*, W. N. 1876, p. 178.

On an application for the appointment of new trustees, the Court will not enter into questions with regard to the validity of the instrument creating the trust. *Re Matthews*, 26 Beav. 463; *Re Harrison*, 22 L. J., Ch. 60; *Att.-Gen. v. Ward*, 6 Hare, 477.



The Court will not on petition remove a trustee against his will. *Re Garty*, 10 L. T., N. S. 331. Where it is desired to remove a trustee without his consent, even on the ground of misconduct, an action must be brought. *Re Blanchard*, 3 De G., F. & J. 131. And see generally as to removal of trustees, Lewin on Trusts, ch. xxviii. p. 719 (7th edition).

Removal  
of trustee.

Dissension between a trustee and a *cestui qui trust*, is not of itself a sufficient ground for the removal of the trustee (*Foster v. Davis*, 10 W. R. 180); nor is the fact that a trustee has deviated from his strict duty through misapprehension. *Att.-Gen. v. Caius College*, 2 Keen, 150; *Att.-Gen. v. Coopers' Co.*, 19 Ves. 192.

The discretion of the Court in appointing new trustees is not exercised arbitrarily, but in accordance with certain definite principles; the Court will regard, first, the wishes of the settlor expressed or implied in the settlement; secondly, the interests of all the *cestuis que trusts*; and thirdly, the question whether the appointment will promote or impede the execution of the trust. *Re Tempest*, L. R., 1 Ch. A. 485.

The Court has authorized the appointment as trustees of the tenant for life (*Foster v. Abraham*, L. R., 17 Eq. 351); *cestuis que trusts* in remainder, and their husbands (*Passingham v. Sherborne*, 9 Beav. 424; *Re Davis*, L. R., 12 Eq. 214); and in a very recent case the husband of a *cestui que trust* was appointed one of two trustees of a will, with a direction that if he should become sole trustee, a co-trustee should be forthwith appointed. (*Re Parrott*, 30 W. R. 97); the solicitor acting for the petitioner (*Re Bretnall*, W. N. 1872, p. 77); a *feme sole* (*Re Campbell*, 31 Beav. 176; *Re Barkley*, L. R., 9 Ch. A. 720); and an alien domiciled in England (*Meinertzen v. Davis*, 1 Coll. 335; *Re Harrison*, 22 L. J., Ch. 69); and in a case where all the *cestuis que trusts* were out of the jurisdiction, the Court appointed new trustees resident out of the jurisdiction. *Re Liddiard*, 14 Ch. D. 310.

Who will  
be ap-  
pointed.

Infants are, and *femes covertes* have hitherto been, under disabilities which rendered it inadvisable that they should be appointed trustees (see Lewin on Trusts, pp. 32 *et seq.*, and the cases there cited); but now by sect. 18 of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), it is enacted that "a married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as aforesaid (see sect. 6), or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid (sect. 7), or any share, stock, debenture, debenture stock or other benefit, right, claim or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were a *feme sole*."

Married  
woman as  
an execu-  
trix or  
trustee.

The Court will require an affidavit of the fitness of the new trustees (*Re Battersby*, 16 Jur. 900); the affidavit of the solicitor is not sufficient. *Grundy v. Buckridge*, 22 L. J., Ch. 1007.

Evidence

Consent  
to act.

The consent of the new trustees to act will also be required in writing (*Re Battersby, supra*), or made by counsel on their behalf (*Re Parke*, 21 L. T. 218), but they need not appear to consent. *Re Draper*, 2 W. R. 440.

Service.

All *cestuis que trusts* who do not join in the application should be served with notice of the application (*Re Richards*, 5 De G. & Sm. 636); as to infants, see *Re Fellows*, 2 Jur., N. S. 62; as to appearance where the parties interested are numerous, see *Re Blanchard*, 3 De G., F. & J. 131; *Re Sharpley*, 1 W. R. 271. See generally as to appointment of new trustees by the Court, Shelford's R. P. Statutes, 667; Morgan, 98; Lewin on Trusts, Ch. xxviii.

Number of  
trustees to  
act.

**39.**—(1.) Notwithstanding anything in this Act, capital-money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement, unless the settlement authorizes the receipt of capital trust money of the settlement by one trustee (c).

(2.) Subject thereto, the provisions of this Act referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.

Sole  
trustee.

(c) It has been hitherto the rule that money should not be paid out of Court to a sole trustee except under special circumstances. *Re Roberts*, 9 W. R. 758, and see *Viscountess D'Adhemar v. Bertrand*, 35 Beav. 19; *Re Renault*, 16 Jur. 233; *Re Dickinson*, 1 Jur., N. S. 724; *Re Ellison*, 2 Jur., N. S. 62; *Re Porter*, *ib.* 349.

Rents and profits of settled lands may be paid to a single trustee, who is empowered to give valid receipts therefor. Sect. 40, *infra*.

By the Conveyancing Act, 1881, s. 31 (3), it is provided, that "it shall not be obligatory to appoint more than one new trustee, where only one trustee was originally appointed;" the question therefore arises, whether, where a sole trustee was originally appointed, it can be considered that the "settlement otherwise provides," so as to allow of capital-money to be paid over to such sole trustee, and empower him to give an effectual receipt. See *Re Renault*, 16 Jur. 233, where a sole trustee was appointed, only one trustee having been originally appointed by the will creating the trust, and the estate being about to be wound up. In the absence of express judicial decision a purchaser or mortgagee could not be advised to pay over capital money arising under this Act on the receipt of a sole trustee.

**40.** The receipt in writing of the trustees of a settlement (*d*), or where one trustee is empowered to act, of one trustee, or of the personal representatives or representative of the last surviving or continuing trustee, for any money or securities, paid or transferred to the trustees, trustee, representatives, or representative, as the case may be, effectually discharges the payer or transferor therefrom, and from being bound to see to the application (*e*) or being answerable for any loss or misapplication thereof, and, in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of this Act, or that no more than is wanted is raised.

Trustees' receipts.

(*d*) The definition of settlement in sect. 2 (1), *ante*, p. 19, renders this provision retrospective, so as to apply to trustees of settlements made before the commencement of the Act.

Retro-spective effect.

Powers to give receipts have been conferred on trustees by several recent statutes, but these have been to a great extent superseded in practice by sect. 29 of Lord Cranworth's Act (now repealed), which enacted that the receipts in writing of any trustees or trustee for any money payable to them or him by reason or in exercise of any trusts or powers should be good discharges. The operation of that Act was confined by sect. 34 to instruments executed after 28th August, 1860.

Power to give receipts.  
23 & 24  
Vict. c. 145

The wording of this section is similar to that of sect. 36 of the Conveyancing Act, 1881, which is retrospective.

44 & 45  
Vict. c. 4.

(*e*) Formerly, in all cases, where no Act of Parliament applied, a purchaser was generally bound to see to the application of the purchase-money unless an intention to the contrary was expressed or implied in the instrument creating the trust. As to cases in which such intention was held to have been implied on the ground of a trust for immediate sale or otherwise, see Lewin on Trusts, 7th Ed. Ch. xviii. p. 410.

Powers to give receipts are conferred by Lord St. Leonards' Act, sect. 23, on persons to whom purchase or mortgage-money is payable upon any express or implied trust (see Shelford's R. P. Stat. p. 488), and by the Conveyancing, &c. Act, 1881, sect. 36, on trustees generally. It has been held that under the latter Act trustees, who had no power under the settlement to give receipts, could give effectual receipts as persons "absolutely entitled" on payment to them out of Court of money

22 & 23  
Vict. c. 35.

representing land taken by a railway company under the Lands Clauses Consolidation Act, 1845, sect. 69. *Re Thomas*, 30 W. R. 244.

Protection  
of each  
trustee  
individu-  
ally (*f*).

**41.** Each person who is for the time being trustee of a settlement is answerable for what he actually receives only, notwithstanding his signing any receipt for conformity, and in respect of his own acts, receipts, and defaults only, and is not answerable in respect of those of any other trustee (*g*), or of any banker (*h*), broker (*i*), or other person, or for the insufficiency or deficiency of any securities (*k*), or for any loss not happening through his own wilful default.

Trustee's  
indemnity.

(*f*) This section provides for the protection of trustees in terms similar to those contained in most modern settlements as drawn by conveyances. See also the indemnity clause contained in sect. 31 of Lord St. Leonards' Act.

22 & 23  
Vict. c. 35.

It has been repeatedly held, that the indemnity clause usually inserted in settlements merely expresses the general doctrine held by the Courts, and was accordingly superfluous where there was no default, and unavailing where there was default. *Hanbury v. Kirkland*, 3 Sim. 265; *Moyle v. Moyle*, 2 R. & M. 710; *Droser v. Breton*, 15 Beav. 221; *Dix v. Burford*, 19 Beav. 409; *Brumridge v. Brumridge*, 27 Beav. 5; and see Dav. Conv. iii. p. 183.

It will, therefore, be very unsafe for trustees to rely too far upon the protection purported to be given by this section, so as to induce them to depart from those strict rules with regard to the trust, to which they would otherwise have felt themselves bound to adhere.

Receipts  
*pro forma*.

(*g*) It was first established by the decision in *Townley v. Sherborne*, Bridg. 35, that a trustee is not liable for the acts and defaults of his co-trustees (see also *Leigh v. Barry*, 3 Atk. 582); and subsequently it was held that a trustee joining in receipts merely *pro forma* is not answerable for misapplication by his co-trustee. *Re Fryer*, 3 K. & J. 317, and the cases there cited. See also *Wilkinson v. Hogg*, 10 W. R. 47, and see Dav. Conv. vol. iii. p. 246.

But it has been frequently held that the *onus probandi* was thrown on the trustee to show that he did in fact sign merely for conformity, and that the money was actually received by his co-trustee alone. *Brice v. Stokes*, 11 Ves. 324; *Scarsfield v. Howes*, 3 B. C. C. 95.

Acts and  
defaults

It has been held to be negligence amounting to wilful default on the part of a trustee so as to render him liable for loss, if he

allows the money to remain for an unreasonable time in the hands of his co-trustee without providing for its investment (*Lincoln v. Wright*, 4 Beav. 427); or if he relies on the mere statement of his co-trustee, that it has been duly invested. *Thompson v. Finch*, 22 Beav. 316.

of a co-trustee,

(h) Trustees have been held responsible, notwithstanding an express provision in the instrument creating the trust, that they should not be answerable for loss which might happen "by the misfeasance, failure or insolvency of any banker, with whom the trust monies might be lodged or safe custody or investment," for having trust monies for more than a year from the testator's death in the hands of a banker who failed. *Moyle v. Moyle*, 2 R. & M. 710. So, too, where trustees have lent trust money to a bank at interest on the security of its notes. *Darke v. Martin*, 1 Beav. 525; *Rehden v. Wesley*, 29 Beav. 213.

of bankers.

(i) A trustee who employed a broker for investment of the trust money, and allowed it to remain in the broker's hands for five weeks on the assurance that the securities were being prepared, was held liable to make good the loss occasioned by the embezzlement of the money by the broker. *Re Speight*, W. N. 1882, p. 93.

Brokers.

(k) "The protection purporting to be given in settlements in respect of the insufficiency or deficiency of any securities, or for any loss not happening through the wilful default of trustees, does not in any manner exonerate them from the diligence and vigilance which they are bound to use as well as in respect of the selection of investments as in other matters pertaining to the trust." *Dav. Conv. iii. p. 182.*

Insufficiency, &c. of securities.

As to investments authorized by this Act and generally, see sect. 21, *ante*, p. 49.

In the choice of investments, whether authorized by law or by the express terms of the settlement, trustees individually and generally are bound to exercise reasonable care and discretion, or they will be held liable for any loss which may occur to the trust property, notwithstanding any indemnity clause in a settlement, and, as it is conceived, notwithstanding the protection purporting to be given to them by this and the next following sections.

Trustees bound to exercise care in selection.

Trustees, although authorized to invest in real securities, ought not to lend money on a second mortgage. *Drosier v. Brereton*, 15 Beav. 226; *Lockhart v. Reilly*, 1 De G. & J. 476.

Second mortgage.

In Ireland the system of registration of deeds affecting land, either by way of sale or mortgage, affords great protection against tacking; and accordingly in *Waring v. Waring*, 3 Ir. Ch. Rep. 337, Blackburne, L. C., said, "I do not mean to lay down the proposition that trustees may not lend money on a *puise* security," but he went on to say that in case of such investment great care and caution ought to be exercised in ascertaining that the value of the property to be charged is sufficient. See also *Norris v. Wright*, 14 Beav. 300.

Trustees cannot be advised to lend on an equitable charge. *Swaffield v. Nelson*, W. N. 1876, p. 255.

Equitable charge.

Trustees ought not to advance more than two-thirds of the value on the security of freehold land; nor more than half on freehold houses (*Norris v. Wright*, 14 Beav. 307; *Macleod v. Annesley*, 16 Beav. 600), and not even that amount if the alleged value is of a speculative character depending on the goodwill of a business. *Stickney v. Sewell*, 1 M. & Cr. 8; *Budge v. Gummow*, L. R., 7 Ch. A. 719. Nor should they, as a general rule, lend on the security of leaseholds (even if authorized to invest in leasehold securities) for short terms or with onerous covenants, nor on the security of leaseholds for lives, unless renewable for ever as is frequently the case in Ireland; as to which, see *Macleod v. Annesley*, *ubi supra*.

Trustees must not lend to one of themselves, as each trustee ought to exercise his unbiassed judgment in the selection of investments. *Francis v. Francis*, 5 De G., M. & G. 108; *Crosskill v. Bower*, 32 Beav. 86; *Fletcher v. Green*, 33 Beav. 426.

As to investing in wasting securities, see *Ticknor v. Old*, L. R., 18 Eq. 422.

And see generally as to the liabilities of trustees for loss arising from improper investment or non-investment. Lewin on Trusts, Ch. xiv. p. 281.

Protection  
of trustees  
gene-  
rally (*l*).

**42.** The trustees of a settlement, or any of them, are not liable for giving any consent, or for not making, bringing, taking, or doing any such application, action, proceeding, or thing, as they might make, bring, take, or do (*m*); and in case of purchase of land with capital money arising under this Act, or of an exchange, partition, or lease, are not liable for adopting any contract made by the tenant for life, or bound to inquire as to the propriety of the purchase, exchange, partition, or lease, or answerable as regards any price, consideration, or fine, and are not liable to see to or answerable for the investigation of the title, or answerable for a conveyance of land, if the conveyance purports to convey the land in the proper mode, or liable in respect of purchase-money paid by them by direction of the tenant for life to any person joining in the conveyance as a conveying party, or as giving a receipt for the purchase-

money, or in any other character, or in respect of any other money paid by them by direction of the tenant for life on the purchase, exchange, partition, or lease (*n*).

(*l*) This section contains provisions which are intended to give to trustees, generally or collectively, protection in the administration of the trust. It consists of two distinct parts: the first is general in its terms and corresponds to the common form of indemnity usually inserted in settlements, and, like the immediately preceding section, does not, as it is conceived, make any change in the doctrines hitherto prevailing with regard to the responsibility of trustees. See note (*f*) to sect. 41, *ante*, p. 84. Protection of trustees

(*m*) A *cestui que trust* may require the trustees to renew leaseholds for lives, and if necessary may bring an action to compel them to do so, on giving proper indemnity (*Bennett v. Colley*, 2 M. & K. 233); so, too, he may compel them to allow him to bring in their names actions necessary for protecting the trust property (*Fletcher v. Fletcher*, 4 Hare, 78); and a trustee may be restrained by injunction from doing any act not authorized by the trust. *Balls v. Strutt*, 1 Hare, 146. And see generally as to enforcing performance of their duty by trustees, Lewin on Trusts, ch. xxvii. p. 706.

(*n*) As to the power of tenants for life to enter into contracts for purchase, &c., see sect. 31, *ante*, p. 69.

The protection given by the latter part of this section to trustees with regard to the special objects of this act, and particularly the adoption and carrying out of contracts entered into by the tenant for life, appears to be so worded as effectually to protect trustees from liability with regard to the acts specified, which otherwise might involve breaches of trust.

**43.** The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them. Trustees' reimbursement (*o*).

(*o*) This section merely declares anew what is the existing doctrine with regard to the reimbursement of trustees. *Feoffees of Heriot's Hospital v. Ross*, 12 Cl. & F. 512.

**44.** If at any time a difference arises between a tenant for life and the trustees of the settlement, respecting the exercise of any of the powers of this Act, or respecting any matter relating Reference of differences to Court (*p*).

thereto, the Court may, on the application of either party, give such directions respecting the matter in difference, and respecting the costs of the application, as the Court thinks fit.

Checks  
against  
abuse of  
powers.

(*p*) This and the next following section are intended to prevent the abuse by the tenant for life of his powers under this Act by providing that he shall give notice of his intention to exercise such powers to the trustees of the settlement, and also to their solicitor, and empowering the trustees, if they see reason to object to the proposed transaction, to apply to the Court. As regards strict settlements of large properties, these provisions may perhaps be found to be effectual, without necessarily causing any serious inconvenience, as in such settlements, according to the usual practice of conveyancers, trustees with powers of sale have been appointed even where the legal estates are given to the successive beneficial owners. But the term settlement, as defined by this Act, includes all dispositions, past and future, by deed or will, whereby any land is limited or directed to be sold (sect. 63, *post*, p. 115) for the benefit of any person for life with a gift over. Such dispositions, especially as regards wills affecting small holdings, are often inartificially drawn and do not nominate any trustees within the meaning of this Act. Sects. 44, 45 have no application to cases where there are no "trustees of the settlement," and consequently in such cases it will be necessary to apply to the Court to appoint trustees, unless the tenant for life is to be allowed to enter into contracts and effect sales, &c., without notice to anyone.

Notice to  
trustees.

**45.—(1.)** A tenant for life, when intending to make a sale, exchange, partition, lease, mortgage, or charge, shall give notice of his intention in that behalf to each of the trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last known place of abode in the United Kingdom, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life, by posting a registered letter, containing the notice, addressed to the solicitor at his place of business in the United Kingdom, every letter under this section being posted not



less than one month before the making by the tenant for life of the sale, exchange, partition, lease, mortgage, or charge, or of a contract for the same (q).

(2.) Provided that at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement.

(3.) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section (r).

(q) It would appear to be here implied that during the month which is to elapse between the giving of the notices and the completion of the intended sale or other transaction, it will be open to the trustees to object if they consider they have reasonable grounds for doing so, and, if necessary, to apply to the Court under sect. 44, to give directions respecting the difference between them and the tenant for life with regard to the exercise of his powers. It is apparently intended that after the expiration of the month, without an objection being raised by the trustees, the proposed transaction shall be indefeasible, the only remedy for loss to the inheritance being against the tenant for life personally. See sect. 53, *post*, p. 102.

According to the strict construction of this section, it would seem as if the tenant for life is not bound thereby to give any notice to any one, if there are no trustees of the settlement within the meaning of this Act; nor, (sub-s. 2,) unless there are two or more such trustees. This, however, cannot be intended. Another construction is that, to render valid a contract, as between the tenant for life and other persons interested under the settlement, notice must in all cases be given, as here prescribed, and that if there are no trustees or only one trustee, it will be necessary for the tenant for life in exercise of his powers under the settlement, or by statutes, to appoint one or more trustees, or if necessary to apply to the Court to make such appointment, under sect. 38, *ante*, p. 77, and then to give the prescribed notice. This construction is however inconsistent with the view suggested (see note (b), *ante*, p. 56), as to the meaning of sect. 22, viz., that where there are no trustees, sales, &c. can be effected without their appointment, provided the money is paid into Court.

It is further not quite clear how the obligation imposed by this section is to be enforced, or what will be the consequence of not giving notice. *Bona fide* purchasers, &c., are not to be concerned to inquire whether notice has been given or not, and the omission would not apparently affect the validity of the

Notice.

Sole trustee.

contract, except so far as it might disentitle the tenant for life from enforcing specific performance.

The observance of this obligation by a tenant for life would be not unlikely at times to cause inconvenience, as intending purchasers or lessees may not be always willing to allow the negotiations to remain for a month in suspense or uncertainty before even a preliminary contract can be made. It has not hitherto been the practice of conveyancers to attach any such obligation to powers vested in tenants for life by settlements; and in Precedent II. *post*, p. 265, it has been thought well to introduce provisions negating the operation of this section so far as powers of leasing are concerned.

Construc-  
tive notice.

(*r*) It may be presumed that a purchaser, not being concerned to inquire, will not be entitled to require evidence of the giving of notice, as part of the title. It may be doubted whether a person with notice that the requirements of this section had not been complied with, could be deemed to be "dealing in good faith." As to constructive notice, see Conveyancing Act, 1882, sect. 3.

45 & 46  
Vict., c. 39.

Regula-  
tions re-  
specting  
payments  
into Court,  
applica-  
tions, &c.

## XI.—COURT; LAND COMMISSIONERS; PROCEDURE.

**46.**—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court (*s*).

(2) Payment of money into Court effectually exonerates therefrom the person making the payment (*t*).

(3.) Every application (*u*) to the Court shall be by petition (*v*), or by summons at Chambers (*x*).

(4.) On an application by the trustees of a settlement notice shall be served in the first instance on the tenant for life.

(5.) On any application notice shall be served on such persons, if any, as the Court thinks fit.

(6.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application, and may, if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement (*y*).

(7.) General rules for purposes of this Act shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and may be made accordingly.

(8.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine ; and rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

(9.) General rules, and rules for the Court of Chancery of the County Palatine, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act.

(10.) The powers of the Court may, as regards land not exceeding in capital value five hundred pounds, or in annual rateable value thirty pounds, and, as regards capital money arising under this Act, and securities in which the same is invested, not exceeding in amount or value five hundred pounds, and as regards personal chattels settled or to be settled, as in this Act mentioned, not exceeding in value five hundred pounds, be exercised by any County Court within the district whereof is situate any part of the land which is to be dealt with in the Court, or from which the capital money to be dealt with in the Court arises under this Act, or in connexion with which the personal chattels to be dealt with in the Court are settled.

**Assign-  
ment of  
business.**

(s) As to the assignment of business to particular Divisions of the High Court of Justice, see the Judicature Act, 1873, sects. 33, 34, and Ord. V. r. 4. The matter must be assigned to one of the judges of the Chancery Division by marking the same with the name of such of the said judges as the petitioner shall think fit. Judicature Act, 1873, sect. 42.

As to transfer of actions from one judge to another, see Ord. XLI.; and see *Re Boyd*, W. N. 1876, p. 184.

(t) As to payment into Court, see note (a), sect. 22, *ante*, p. 56.

**Applica-  
tions under  
the Settled  
Land Act,  
1882.**

(u) Application to the Court under this Act will be necessary for the following purposes:—

1. To authorize grants of building or mining leases for longer than the statutory term, or of fee farm grants in perpetuity, according to the circumstances of the district, sect. 11, p. 39;
2. To authorize the sale or lease of a mansion house and park, &c. without the consent of trustees of the settlement, sect. 16, p. 44;
3. When capital money is paid into Court, to give directions as to its investment or application, sect. 22, p. 54;
4. To authorize the trustees to apply capital money in pursuance of a scheme for improvements approved by the commissioners, sect. 26, p. 64;
5. To give directions respecting the enforcing, carrying into effect, varying, or rescinding contracts for sale, &c. of the settled property entered into by the tenant for life, sect. 31 (3), p. 69;
6. To give directions as to investment on payment of capital money in Court paid in respect of a lease or reversion, sect. 34, p. 73;
7. When a tenant for life is impeachable for waste, to authorize the cutting and sale of timber without the consent of the trustees, sect. 35, p. 73;
8. To approve of proceedings for protection on recovery of land settled or claimed as settled, sect. 36, p. 75;
9. To authorize sale or purchase of chattels settled, or to be settled, as heirlooms, sect. 37, p. 76;
10. To appoint trustees of a settlement, sect. 38, p. 77;
11. To give directions with regard to matters of difference between a tenant for life and the trustees of the settlement respecting the exercise of any power of the Act, sect. 44, p. 87;
12. To give directions as to payment of costs out of settled property, sect. 47, p. 95;
13. To give opinion or directions on questions of doubt under sect. 56, p. 106;
14. Where there are no trustees of the settlement, to appoint a person to exercise the statutory powers of a tenant for life on behalf of an infant, sect. 60, p. 112;

As to the rights of remaindermen, independent of this Act see note to sect. 53, *post*, p. 103.

**Applica-**

(v) A petition should contain as concisely as may be a state-

ment of the material facts, but not the evidence by which they are to be proved, and must be divided into paragraphs, numbered consecutively, each paragraph containing, as nearly as may be, a separate allegation. Signature of counsel is not necessary. Ord. XIX. r. 4. A petition or summons may be either printed or written. R. 5.

Petitions are either special or of course.

Cons. Ord. XXXIV. r. 1, directs that, at the foot of every petition not being a petition of course, a statement shall be made of the persons (if any) intended to be served; and if no person is intended to be served, a statement to that effect shall be made at the foot of the petition.

Upon any petition or summons, evidence may be given by affidavit, but the judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit. Ord. XXXVII. r. 2.

By Add. Rules, 1875, r. 17, where a petition in any matter assigned to the Chancery Division is served, and notice is given to the party served that in case of his appearance in Court, his costs will be objected to and accompanied by a tender of costs for perusing the same, the amount to be tendered is to be 2*l.* 2*s.* The party making such payment is to be allowed the same in his costs, provided the service was proper, but not otherwise: this order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the judge shall consider the party entitled, notwithstanding such notice or tender to appear in Court. In any other case in which a solicitor of a party served necessarily or properly peruses such petition without appearing thereon, he is to be allowed a fee not exceeding 2*l.* 2*s.*

And by r. 21, where any party appears upon any application or proceeding in Court or at chambers, in which he is not interested, or upon which he ought not to attend, he will not be allowed costs, unless the judge expressly directs otherwise.

See generally as to the practice with regard to special petitions, Set. p. 50.

As to the drawing up, passing and entering of orders on petitions of course, see Cons. Ord. XXIII. r. 17. And as to discharging, reversing or varying the same, see 13 & 14 Vict. c. 35, s. 29, and Cons. Ord. VI. rr. 9, 10.

No order made on petition is to be passed until the original petition has been filed in the Report Office, and a note thereof made on the order by the clerk of reports. Cons. Ord. XXIII. r. 23.

(x) General rules, with regard generally to procedure by summons at chambers, are laid down by Cons. Ord. XXXV., and, particularly with regard to business in the Chancery Division, by the Regulations of the 8th August, 1857. See Morgan, 137 *et seq.* This procedure is not altered by the Judicature Acts and Orders. Ord. I. r. 3. See as to procedure in chambers generally, Seton, p. 60 *et seq.*; Morgan, 137 *et seq.*

Summonses are usually heard in chambers before the chief clerks, who, under 15 & 16 Vict. c. 80, s. 29, have "full power

tion by  
petition.

Evidence.

Orders on  
petitions  
of course.

Passing of  
order on  
petition.

Summons  
at cham-  
bers.

15 & 16  
Vict. c. 80.

to issue advertisements to summon parties and witnesses, to administer oaths, to take affidavits and acknowledgments, other than acknowledgments by married women, to receive affirmations, and, when so directed by the judge to whose Court he is attached, to examine parties and witnesses either upon interrogatories or *vidé voce* as such judge shall direct." Every suitor may, however, claim to be heard by the judge in person (*Re Rigg*, 10 W. R. 365; *Re Mitchell*, 12 W. R. 39); and a witness may require his examination to be conducted by the judge personally. *Re London and County Assurance Co.*, 5 W. R. 794. See also *Ex parte Bunn*, 24 Beav. 137.

As to examination by interrogatories, see Ord. XXXI. rr. 1—10.

**Witnesses.** By Cons. Ord. XXXV. r. 30, it is ordered, that "Where a chief clerk is directed by the judge to examine a witness, the practice and mode of proceeding shall be the same as in the case of the examination of witnesses before an examiner, subject to any special directions which may be given in any particular case." In the prosecution of an inquiry before the chief clerk, any person capable of giving information may be summoned by subpoena, and is bound to attend and answer all questions properly put to him. *Venables v. Schweitzer*, L. R., 16 Eq. 76.

By 15 & 16 Vict. c. 80, s. 31, parties and witnesses summoned are liable to process of contempt in case of disobedience to any order of the Court, or of default in attendance. By sects. 40—42 of this Act, the judge at chambers may receive and act on the opinions of conveyancers appointed under the Act, and of accountants, engineers and other experts in any proceeding. See *Case v. Metropolitan Rail. Co.*, 27 Beav. 247.

As to reference of questions to official or special referees, see Judicature Act, 1873, sects. 56—59, and Ord. XXXVI. rr. 30—36.

**Costs.** (y) By Add. Ord. 1875 (Sp. All.), r. 10, it is provided that under special circumstances costs of proceedings at chambers may be allowed on the higher scale. And by r. 14 no costs of counsel attending at chambers are to be allowed unless the judge certifies it to be a proper case for counsel to attend. The practice of the judges of the Chancery Division with regard to the attendance of counsel is as follows:—Counsel will be heard in chambers by Mr. Justice Chitty, and in the chambers of the other judges by their chief clerks; but fees for attendance before the chief clerks will not be allowed without a certificate from the chief clerk that the case was proper for counsel to attend.

**Counsel.**

As to costs of proceedings at chambers generally, see *Seton*, p. 66, Dav. 1055; and see *Halliley v. Henderson*, 4 Jur., N. S. 202; *Lister v. Bell*, 5 Jur., N. S. 115.

**Appeals as to costs.**

By the Judicature Act, 1873, sect. 49, it is enacted that, "No order made by the High Court of Justice, or any judge thereof by consent of the parties, or as to costs only, which by law are left to the discretion of the Court, shall be subject to

any appeal except by leave of the Court or judge making such order." And by sect. 50, "Every order made by a judge of the said High Court in chambers, except orders made in the exercise of such discretion as aforesaid, may be set aside or discharged, or discharged upon notice by any Divisional Court, or by the judge sitting in Court according to the course and practice of the Division of the High Court to which the particular cause or matter in which such order is made may be assigned, and no appeal shall lie from any such order, to set aside or discharge, which no such motion has been made unless by special leave of the judge by whom such order was made, or of the Court of Appeal."

Where a matter has been fully argued before a judge in chambers, an appeal from his order may now be made to the Court of Appeal without leave. *Murr v. Cooke*, 24 W. R. 756. But the Court of Appeal will not generally review the decision by a judge in chambers of a discretionary matter. *Golding v. Wharton Rail. Co.*, 1 Q. B. D. 374.

Appeals from chambers generally.

**47.** Where the Court directs that any costs, charges or expenses be paid out of property subject to a settlement, the same shall, subject and according to the directions of the Court, be raised and paid out of capital money arising under this Act, or other money liable to be laid out in the purchase of land to be made subject to the settlement, or out of investments representing such money, or out of income of any such money or investments, or out of any accumulations of income of land, money or investments, or by means of a sale of part of the settled land in respect whereof the costs, charges or expenses are incurred, or of other settled land comprised in the same settlement and subject to the same limitations, or by means of a mortgage of the settled land or any part thereof, to be made by such person as the Court directs, and either by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term, or otherwise, or by

Payment of costs out of settled property (z).

means of a charge on the settled land or any part thereof, or partly in one of those modes and partly in another or others, or in any such other mode as the Court thinks fit.

Costs.

(z) Costs of all proceedings are in the discretion of the Court (Ord. LV. r. 1).

According to the general practice of the Court with regard to petitions under the Trustee Act, 1850, if an application is solely for the benefit of the tenant for life, he will have to pay the costs; but if it is for the general benefit of the estate, the costs will be defrayed out of the corpus as between solicitor and client. Seton, 527. See *Re Parby*, 29 L. T. 72; *Carter v. Sebright*, 26 Beav. 374; *Re Brackenbury*, L. R., 10 Eq. 45.

Appointment of trustees.

Costs of appointment of new trustees under that Act were ordered to be raised by a mortgage of the settled land in *Re Crabtree*, 14 W. R. 497.

Constitution of Land Commissioners; their powers, &c.

**48.**—(1.) The commissioners now bearing the three several styles of the Inclosure Commissioners for England and Wales, and the Copyhold Commissioners, and the Tithe Commissioners for England and Wales, shall, by virtue of this Act, become and shall be styled the Land Commissioners for England (a).

(2.) The Land Commissioners shall cause one seal to be made with their style as given by this Act; and in the execution and discharge of any power or duty (b) under any Act relating to the three several bodies of commissioners aforesaid, they shall adopt and use the seal and style of the Land Commissioners for England, and no other.

(3.) Nothing in the foregoing provisions of this section shall be construed as altering in any respect the powers, authorities, or duties of the Land Commissioners, or as affecting in respect of appointment, salary, pension, or otherwise any of



those commissioners, in office at the passing of this Act, or any assistant commissioner, secretary, or other officer or person then in office or employed under them.

(4.) All Acts of Parliament, judgments, decrees, or orders of any court, awards, deeds, and other documents, passed or made before the commencement of this Act, shall be read and have effect as if the Land Commissioners were therein mentioned instead of one or more of the three several bodies of commissioners aforesaid.

(5.) All acts, matters, and things commenced by or under the authority of any one or more of the three several bodies of commissioners aforesaid before the commencement of this Act, and not then completed, shall and may be carried on and completed by or under the authority of the Land Commissioners ; and the Land Commissioners, for the purpose of prosecuting, or defending, and carrying on any action, suit, or proceeding pending at the commencement of this Act, shall come into the place of any one or more, as the case may require, of the three several bodies of commissioners aforesaid.

(6.) The Land Commissioners shall, by virtue of this Act, have, for the purposes of any Act, public, local, personal, or private, passed or to be passed, making provision for the execution of improvements on settled land, all such powers and authorities as they have for the purposes of the Improvement of Land Act, 1864 ; and the provisions of the last-mentioned Act (*c*) relating to their proceedings and inquiries, and to authentica-

tion of instruments, and to declarations, statements, notices, applications, forms, security for expenses, inspections, and examinations, shall extend and apply, as far as the nature and circumstances of the case admit, to acts and proceedings done or taken by or in relation to the Land Commissioners under any Act making provision as last aforesaid; and the provisions of any Act relating to fees or to security for costs (*d*) to be taken in respect of the business transacted under the Acts administered by the three several bodies of commissioners aforesaid shall extend and apply to the business transacted by or under the direction of the Land Commissioners under any Act, public, local, personal, or private, passed or to be passed, by which any power or duty is conferred or imposed on them.

Commis-  
sioners.

(a) The Tithe Commissioners were originally appointed by 6 & 7 Will. 4, c. 71, and were, by 4 & 5 Vict. c. 35, under the title of Copyhold Commissioners, entrusted with the superintendence of proceedings for the enfranchisement of copyholds. By 8 & 9 Vict. c. 118, the First Commissioner of Woods and Forests and two other persons were appointed Inclosure Commissioners for the purpose of superintending the inclosure of commons and other lands. And by 14 & 15 Vict. c. 53, the duties and powers of the Tithe Commissioners, Copyhold Commissioners, and Inclosure Commissioners were vested in the commissioners appointed by that Act, who have since continued to bear the several titles above mentioned, according to the nature of the duties and powers performed, and exercised by them in the particular matter.

(b) For the Acts of Parliament relating to such duties and powers, see Chitty's Statutes, under the headings "Inclosure," vol. 3, p. 334, "Copyhold," vol. 1, p. 1095, "Tithes," vol. 6, p. 559; and "Lands Improvement," vol. 3, p. 1377. See also the Improvement of Land Act, 1864, *post*.

(c) The provisions here particularly referred to are sects. 4 and 5 (*post*, p. 125), relating to declarations and statements, sects. 6 and 7 (*post*, p. 126), relating to notices, and sects. 11—24 (*post*, pp. 128—136), relating to proceedings, &c., of the commissioners preliminary to the sanction by them of improvements under the Act, and sect. 48, &c., relating to inspections.

Powers are also given by the Act to the commissioners with regard to maintenance and insurance of improvements, and for other purposes.

The power of mortgaging settled land given to a tenant for life, by sect. 18 of this Act, *ante*, p. 46, is only exerciseable where money is required for enfranchisement, or for equality of exchange on partition. It is therefore conceived, that where it is desired to raise money by mortgage for improvements of the settled land, it will be necessary to have recourse to the commissioners to charge the cost of the improvements on the inheritance, under sects. 49—71 of the Improvement of Land Act, 1864. See *post*, p. 156 *et seq.*

(d) As to security for costs, see Improvement of Land Act, 1864, s. 14, *post*, p. 129; and as to fees, see Inclosure (Expenses) Act, 1868 (31 & 32 Vict. c. 89), *post*, p. 182, note.

**49.—(1.)** Every certificate and report approved and made by the Land Commissioners under this Act shall be filed in their office.

Filing of certificates, &c. of commissioners.

(2.) An office copy of any certificate or report so filed shall be delivered out of their office to any person requiring the same, on payment of the proper fee, and shall be sufficient evidence of the certificate or report whereof it purports to be a copy.

## XII.—RESTRICTIONS, SAVINGS, AND GENERAL PROVISIONS.

**50.—(1.)** The powers under this Act of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exerciseable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement.

Powers not assignable; contract not to exercise powers void (e).

(2.) A contract by a tenant for life not to exercise any of his powers under this Act is void.

(3.) But this section shall operate without prejudice to the rights of any person being an assignee for value of the estate or interest of the tenant for life; and in that case the assignee's rights shall not be affected without his consent, except that, unless the assignee is actually in possession of the settled land or part thereof, his consent shall not be requisite for the making of leases thereof by the tenant for life, provided the leases are made at the best rent that can reasonably be obtained, without fine, and in other respects are in conformity with this Act (*f*).

(4.) This section extends to assignments made or coming into operation before or after and to acts done before or after the commencement of this Act; and in this section assignment includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or incumbrance; and assignee has a meaning corresponding with that of assignment.

Contract  
not to  
exercise  
powers.

(*e*) By sect. 52 of the Conveyancing Act, 1881, it is enacted that "(1) A person to whom any power, whether coupled with an interest or not, is given, may by deed release or contract not to exercise the power. (2) This section applies to powers created by instruments coming into operation before or after the commencement of the Act."

By sect. 18 of that Act, powers of leasing are vested in mortgagors of land, but by sub-sect. 13 the section applies only if, and so far as, a contrary intention is not expressed in the mortgage deed, or otherwise in writing. As to the effect of excluding the operation of that Act in this respect, see *Wolstenholme and Turner, Conv. Act, 1881, p. 55.*

It would thus appear that from and after the 1st of January, 1883, such restrictions as may be thought advisable with regard to granting leases may be inserted in a mortgage of land, where the mortgagor is owner of the fee simple; but no restrictions, whether in future or in existing mortgages, will

thereafter be effectual to restrain a tenant for life or other limited owner from exercising at his pleasure the powers given to him by this Act of granting leases for twenty-one, sixty, or ninety-nine years, according to the nature of the property leased, provided the leases be at the best rent, without fine, and are in conformity with the Act.

(f) By sect. 5 of the Conveyancing, &c. Act, 1881, the Court is empowered when land subject to any incumbrance is sold by the Court, or out of Court, on the application of any party to the sale, to order payment into Court of so much of the purchase-money as may be sufficient to meet the incumbrance, and any interest due thereon, and, upon such payment, so to declare the land free from incumbrance. It is conceived that a tenant for life, wishing to exercise his power of sale under this Act, would be entitled to apply under the section referred to.

**51.**—(1.) If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and partly after, the commencement of this Act a provision is inserted purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life to exercise any power under this Act, or attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising, any power under this Act, that provision, as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void.

Prohibition or limitation against exercise of powers, void (g).

(2.) For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any power shall be

and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power, discharged from liability to determination or cesser by or on his exercising the same (g).

Restraint  
on aliena-  
tion.

(g) An important change in the law with regard to restraint on alienation of land by gift over, condition, or forfeiture, is introduced by this section, which is retrospective, and cannot be excluded by contract. See sect. 50.

It is well established that a condition that a tenant in tail shall not suffer a recovery, or that a tenant in fee shall not alien, is void, as being repugnant to their estates (*Corbet's case*, 1 Rep. 83; *Bradley v. Peizoto*, 3 Ves. 324), even though there be a gift over on alienation. *Wace v. Conn*, 10 B. & C. 433; *Willis v. Hiscox*, 4 M. & C. 197; and see notes in Tudor's L. C. Conv. 858. This rule of law is now extended so as to make a restraint on alienation of the fee simple in settled land inconsistent with the estate of a tenant for life.

Cesser.

Hitherto, although property would not be so settled as to take away a tenant for life's power of alienating his interest (*Brandon v. Robinson*, 18 Ves. 429), yet it was possible to limit property not belonging to the settlor so as to give a life interest terminable on alienation, and a gift over need not necessarily have been expressed. *Rockford v. Harkman*, 9 Hare, 475; see further as to life interests determinable on alienation, Dav. Conv. iii. 109.

Provision  
against  
forfeiture.

**52.** Notwithstanding anything in a settlement, the exercise by the tenant for life of any power under this Act shall not occasion a forfeiture.

Tenant for  
life trustee  
for all parties  
interested (h).

**53.** A tenant for life shall, in exercising any power under this Act have regard to the interests of all parties entitled under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position and to have the duties and liabilities of a trustee for those parties.

Notice to  
trustees.

(h) Where there are trustees of the settlement, the tenant for life, on exercising any power under this Act, must give notice to them, and separately to their solicitor (sect. 45); and the trustees may apply to the Court to decide any difference which arises between them and the tenant for life as to the

exercise of his power under the Act, or any matter relating thereto. (Sect. 44.) On completion of the proposed transaction, all capital money receivable in respect of it must be paid over to the trustees or into Court for investment or application.

Besides the requirement as to notice to the trustees, the main checks to prevent abuse of his power by a tenant for life appear to be (1) the provision that capital money arising under this Act shall be paid either to the trustees or into Court (sect. 21), and (2) the provision contained in this section.

It may be expected that the provision that capital money shall be paid into Court, unless paid to the trustees, will, in some measure, deter tenants for life from misusing their powers, by withdrawing the moneys from their control. The Court, according to its usual practice, will not readily part with moneys paid in, unless satisfied that they will be employed for the purpose for which they were raised, or otherwise properly applied or invested. The control of the Court is, however, confined to the capital money, and no jurisdiction is given by this Act to interfere until such money is paid in.

It would appear that, so far as this Act is concerned, a remainderman who has reason to believe that a tenant for life is about to exercise, or has exercised, his powers improperly, and in a manner detrimental to the inheritance, must mainly rely on the provision contained in this section, for the purpose either of preventing the transaction objected to, or of obtaining a remedy for loss thereby occasioned to the inheritance.

Any remainderman having a present interest, though minute or even remote, is entitled to apply to the Court for protection of that interest. The interest may be vested or contingent (*Lord Darnley v. Fitzhardinge*, 6 Ves. 251; *Allan v. Allan*, 15 Ves. 135; *Roberts v. Roberts*, 2 De G. & S. 29; see also *Re Sheppard*, 4 De G., F. & J. 423); but it must not be a mere possibility upon a possibility. *Davis v. Angel*, 31 Beav. 223. In a recent case under the Settled Estates Act, 1877, where a testator entitled to land in fee, subject to a shifting clause, if he should die without leaving issue who should attain twenty-one years, in favour of A., devised the land upon trust for sale, and died leaving four children, the eldest of whom was twelve years old; it was held that A.'s interest was too remote to entitle him to oppose the sale. *Re Spurway*, 10 Ch. D. 230.

The rights of a remainderman with regard to prevention of an improper exercise of a power by a tenant for life, where there are no trustees of the settlement, are apparently as follows:—

- (1) He may require the appointment of trustees.
- (2) He may institute proceedings to compel the tenant for life to perform his duty as trustee.
- (3) He may obtain an injunction to restrain the tenant for life from an improper exercise of his powers.

(1) The remainderman may require that two or more trustees (sect. 39) shall be appointed. The Court has power, under sect. 38, *ante*, p. 77, to appoint trustees on the application, by

Checks on abuse of powers.

Payment into Court of capital money.

Check provided by this section.

Right of remainderman to prevent a breach of trust.

Appointment of trustees.

petition or summons, of any person interested in the settlement; but it is very doubtful if the Court would entertain such an application without the concurrence of the tenant for life, especially if the ground of the application should be that the appointment of trustees was necessary, by reason of the misconduct of the tenant for life as a trustee, for the benefit of all parties interested within the meaning of this section. See *Re Blanchard*, 3 De G., F. & J. 131. In such a case it would appear that an action should be brought for the purpose of having the custody of the estate placed in the care of a proper number of trustees. *Finlay v. Howard*, 2 Dr. & W. 490.

Proceedings against tenant for life as trustee.

(2) Where a tenant for life under an obligation to obtain renewals of leases neglected to do so, it was held that the remainderman might file a bill to compel him to do so, and to have a receiver appointed and the rents sequestered to form a renewal fund. *Bennett v. Colley*, 2 M. & K. 233.

As to the right of a cestui que trust to compel a trustee on a proper indemnity to lend his name to proceedings for protection of the trust property, see *Fletcher v. Fletcher*, 4 Hare, 78; *Jerdein v. Bright*, 30 Beav. 332.

Commission of waste.

(3) The commission of waste by a tenant for life (except so far as he is expressly authorized to commit waste by this Act in the exercise of his powers) may be restrained by injunction (*Tracy v. Tracy*, 1 Vern. 23; *Farrant v. Lovel*, 3 Atk. 723); and an injunction will be granted on the application of a tenant for life in remainder without making the ultimate owner of the inheritance a party. *Dayrell v. Champneys*, 1 Eq. Ca. Ab. 400. And see as to equitable waste, *Marquis of Downshire v. Lady Sandys*, 6 Ves. 107; *Morris v. Morris*, 15 Sim. 505. See also as to waste, *ante*, p. 68, note (r).

Improvident sale.

It is conceived that the tenant for life, as trustee, might be restrained at the suit of the remainderman from an improvident sale. *Webb v. Earl of Shaftesbury*, 7 Ves. 487; *Rede v. Oakes*, 4 De G., J. & S. 505; *Dance v. Goldingham*, L. R., 8 Ch. A. 902.

Compensation for loss to estate.

In cases where a power has been exercised improperly, to the detriment of the inheritance, the remainderman will have under this section a right to proceed against tenant for life as against a trustee to compel him personally to make good the loss.

It has been repeatedly held that this right of action was not barred by 3 & 4 Will. 4, c. 27: see cases collected in note (c) to *Lewin on Trusts* (7th ed.), p. 743; and by the Judicature Act, 1873, s. 25, sub-s. 2, it is enacted that no claim of a cestui que trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations.

Inasmuch as a tenant for life is by this section expressly constituted a trustee, it would seem that his estate under the settlement, even if legally vested in him, would, notwithstanding the decision in *Fox v. Buckley*, 3 Ch. D. 508, be liable to be stopped to make good the loss occasioned by the breach of trust. *Jacobs v. Ryland*, L. R., 17 Eq. 341, and see *Lewin on Trusts*, p. 777.



A tenant for life being in the position of a trustee under this Act, it may be doubted whether he could safely sell to himself any part of the settled land. See *Grover v. Hugell*, 3 Russ. 428. But see *Bevan v. Habgood*, 1 J. & H. 222. It will, however, be competent for him to apply to the Court under the Settled Estates Act, 1877, s. 16, to authorize a sale of the land to him. The Court will not make an order to that effect without an inquiry. *Re Hilton*, W. N. 1866, p. 107. A power of sale vested in trustees, with consent of the tenant for life, may be properly exercised by a sale to the tenant for life. *Howard v. Ducane*, Turn. & Russ. 81; and see *Dicconson v. Talbot*, L. R., 6 Ch. A. 32.

Purchase of settled land by tenant for life.

**54.** On a sale, exchange, partition, lease, mortgage, or charge, a purchaser, lessee, mortgagee, or other person dealing in good faith with a tenant for life shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration, or rent, as the case may require, that could reasonably be obtained by the tenant for life, and to have complied with all the requisitions of this Act.

General protection of purchasers, &c. (i).

(i) The protection here given to purchasers and other persons dealing in good faith with a tenant for life is important, as preventing the remainderman from following the estate into their hands, as having been improperly conveyed, leased, or charged. As to following the specific estate into the hands of strangers, see *Lewin on Trusts*, c. xxix, p. 699.

Protection to purchasers.

**55.—(1.)** Powers and authorities conferred by this Act on a tenant for life or trustees or the Court or the Land Commissioners are exerciseable from time to time.

Exercise of powers; limitation of provisions, &c.

(2.) Where a power of sale, enfranchisement, exchange, partition, leasing, mortgaging, charging, or other power is exercised by a tenant for life, or by the trustees of a settlement, he and they may respectively execute, make, and do all deeds, instruments, and things necessary or proper in that behalf.

(3.) Where any provision in this Act refers to sale, purchase, exchange, partition, leasing, or other dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses, act, or transaction, the same shall be construed to extend only (unless it is otherwise expressed) to sales, purchases, exchanges, partitions, leaseings, dealings, powers, consents, payments, receipts, deeds, assurances, contracts, expenses, acts, and transactions, under this Act.

Saving for  
other  
powers.

**56.**—(1.) Nothing in this Act shall take away, abridge, or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise, exerciseable by a tenant for life, or by trustees with his consent, or on his request, or by his direction, or otherwise; and the powers given by this Act are cumulative.

(2.) But, in case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life exercises or contracts or intends to exercise any power under this Act, the provisions of this Act shall prevail; and, accordingly, notwithstanding anything in the settlement, the consent of the tenant for life shall, by virtue of this Act, be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exerciseable for any purpose provided for in this Act (*k*).

(3.) If a question arises, or a doubt is entertained, respecting any matter within this section, the Court may, on the application of the trustees of the settle-

ment, or of the tenant for life, or of any other person interested, give its decision, opinion, advice, or direction thereon (*l*).

(*k*) As to the meaning and extent of the term "settlement," see sect. 2 (1), *ante*, p. 19.

By sect. 63, *post*, p. 115, it is provided that land, subject to a trust or direction for sale, shall be deemed to be settled land under this Act. It would thus appear that it will hereafter be necessary to obtain the consent of the "tenant for life" to a sale of "settled land" by trustees in exercise of an imperative power in that behalf. And it may perhaps be held that this will be the case where the direction is in the form not of a power but of a trust. See note (*g*), *post*, p. 118. It will, therefore, be hardly safe for purchasers from trustees selling under a power or trust for sale (notwithstanding anything to the contrary implied or expressed in the settlement) to dispense with inquiry as to whether this consent has been obtained before accepting the title.

(*l*) The application under this section must be by petition or summons. Sect. 46, *ante*, p. 90.

By Lord St. Leonards' Act, 1859, s. 30, it is provided that any trustee may apply by petition, or summons upon a written statement, to a judge for opinion, advice, &c. in the management or administration of the trust property. Under that section it has been held that one of several trustees might apply (*Re Muggeridge*, Johns. 625); and, though in that section (as here) there is no mention of a remainderman, an order has been made on the petition of a *cestui que trust* in remainder. *Re Ward*, 14 W. R. 96. In applications for opinion, &c. under that Act the petition or written statement is required to be signed by counsel (23 & 24 Vict. c. 38, s. 3); and this is still the rule, notwithstanding the general rule laid down in Ord. XIX. r. 4, that signature of counsel to pleadings shall not be necessary.

An application for the opinion of the Court under Lord St. Leonards' Act, merely indemnifies the trustees upon the facts stated, and is no bar to the bringing of an action. *Re Moskett*, Johns. 628.

Application to Court for advice under 22 & 23 Vict. c. 35.

**57.—(1.)** Nothing in this Act shall preclude a settlor from conferring on the tenant for life, or the trustees of the settlement, any powers additional to or larger than those conferred by this Act.

Additional or larger powers by settlement (*m*).

(2.) Any additional or larger powers so conferred shall, as far as may be, notwithstanding

anything in this Act, operate and be exerciseable in the like manner, and with all the like incidents, effects, and consequences, as if they were conferred by this Act, unless a contrary intention is expressed in the settlement.

(*m*) Any additional or larger powers given to trustees must not conflict with or prejudice the powers given to the tenant for life by this Act. See sect. 56 (2), *ante*, p. 106.

### XIII.—LIMITED OWNERS GENERALLY.

Enumera-  
tion of  
other  
limited  
owners, to  
have  
powers of  
tenant for  
life.

**58.—(1.)** Each person as follows shall, when the estate or interest of each of them is in possession, have the powers of a tenant for life under this Act, as if each of them were a tenant for life as defined in this Act (namely) :

- (i) A tenant in tail (*n*), including a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the crown, and so that the exercise by him of his powers under this Act shall bind the crown (*o*), but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by parliament in consideration of public services (*p*) :
- (ii) A tenant in fee simple, with an executory limitation, gift, or disposition over, on failure of his issue, or in any other event (*q*) :
- (iii) A person entitled to a base fee (*r*), although the reversion is in the crown, and so

that the exercise by him of his powers under this Act shall bind the crown :

- (iv) A tenant for years determinable on life, not holding merely under a lease at a rent :
- (v) A tenant for the life of another, not holding merely under a lease at a rent :
- (vi) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life (*s*), whether by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purpose :
- (vii) A tenant in tail after possibility of issue extinct (*t*) :
- (viii) A tenant by the curtesy (*u*) :
- (ix) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not (*x*), or until sale of the land (*y*), or until forfeiture of his interest therein on bankruptcy or other event.

(2.) In every such case, the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, and to a settlement, and to settled land, shall extend to each of the persons aforesaid, and to the instrument

under which his estate or interest arises, and to the land therein comprised.

(3.) In any such case any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid.

**Estate tail.** (n) As to the nature and incidents of an estate tail and how it may be barred, see Burton, Comp. ch. 2, p. 205.

A tenant in tail may cut timber and commit waste without the necessity of barring the entail. Co. Litt. 224a.

**Reversion to the crown.** (o) Where estates tail in land with reversion to the crown have been granted in recompense for services, the grantees are by 33 & 34 Hen. 8, c. 20, restrained from barring the entail even as against their own issue, and this restriction is expressly maintained by the Fines and Recoveries Act, s. 18.

**3 & 4 Will. 4, c. 74.** Lands so granted will (with the exception mentioned in the text) be capable of being alienated or otherwise dealt with by the tenant in tail in possession for the time being under the power given to tenants for life by this Act. There being no trustees of such lands, the reversionary rights of the crown to the property will, it is conceived, be preserved by payment into Court, under sect. 22, sub-sect. 1, of the capital money representing the land alienated.

**Estates granted for public services.** (p) The estates of the Earl of Abergavenny (see 2 & 3 Ph. & M. c. 23, and *Earl of Abergavenny v. Bruce*, L. R., 7 Ex. 145), of the Duke of Marlborough (see 5 Anne, c. 3, and *Davis v. Duke of Marlborough*, 1 Swanst. 74), and of the Duke of Wellington (see 41 Geo. 3, c. 59, s. 6; 42 Geo. 3, c. 113, s. 6; 54 Geo. 3, c. 161, s. 28), are inalienable except for the life interest of the tenants for life in possession for the time being.

**Executory limitations.** (q) As to executory limitations generally, and wherein they differ from springing or shifting uses, see Fearn's Cont. Rem. 390.

It was established by *Pells v. Brown* (Cro. Jac. 590), that under a gift to A. and his heirs, and if A. die without issue then over, A. took an estate in fee, subject to be defeated by the executory gift over in the event specified.

In the case of a devise to A. in fee, but in case A. shall die under age then to B. in fee, the powers of a tenant for life under this Act will be exerciseable on behalf of A. until he comes of age and his estate becomes indefeasible, as provided by sect. 60, *post*, p. 111.

**Base fee.** (r) A base fee is defined by the Fines and Recoveries Act, s. 1, to mean "that estate in fee simple into which an estate tail is converted where the issue in tail are barred, but persons claiming estates by way of remainder or otherwise are not barred."

A base fee is acquired where a tenant in tail conveys land without having executed a disentailing assurance with the consent of the protector of the settlement (if there is a protector), as provided by sect. 34 of the Fines and Recoveries Act. *Sturgis v. Morse*, 2 De G., F. & J. 231. See also as to base fees, Co. Litt. 18, and *Seymour's case*, 10 Rep. 95; *Machel v. Clark*, 2 Ld. Raym. 779.

As to the power of enlarging base fees, see sect. 19 of the Fines and Recoveries Act; and as to Ireland, see 4 & 5 Will. 4, c. 92, s. 16. 3 & 4 Will. 4, c. 74.

(s) A widow having an estate during life or re-marriage is a tenant for life. See *Williams v. Williams*, 9 W. R. 888.

(t) If there be a gift of land in *special* tail, i. e. to A. and the heirs of his body, by B. his wife, then on the death of B. without issue, A. becomes tenant in tail after possibility of issue extinct, and cannot bar the estate tail under the Fines and Recoveries Act: he is, however, not impeachable for waste. *Williams v. Williams*, 12 East, 209, and see Co. Litt. 28 b. Tenant for life after possibility, &c.

(u) "Curtesy" is the life interest to which a husband surviving is entitled in lands of his wife, of which she was seised in fee simple or fee tail in possession, provided he has had by her issue born alive, who did or might inherit. Co. Litt. 35, 52. Curtesy.

(x) A person entitled for his life to receipt of the *net* rents and profits, is hereby given the powers of a tenant for life. Net rents.

(y) As to persons entitled to the income of land until sale thereof, see sect. 63, *post*, p. 115. Trust for sale.

#### XIV.—INFANTS; MARRIED WOMEN; LUNATICS.

**59.** Where a person, who is in his own right seised of or entitled in possession to land, is an infant, then for purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof. Infant absolutely entitled to be as tenant for life (z).

(z) The Conveyancing Act, 1881, s. 41, provides that under the circumstances above mentioned, "the land shall be deemed to be a settled estate within the Settled Estates Act, 1877."

In *Re Letchford*, 2 Ch. D. 719, it was held, that the Court has power, under 11 Geo. 4 & 1 Will. 4, c. 65, to sanction a building lease of the land of an infant, who is seised in fee in reversion, subject to an estate by the curtesy.

**60.** Where a tenant for life, or a person having the powers of a tenant for life under this Act is Tenant for life, infant.

an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement (a), and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders (b).

Notice to trustees. (a) The provisions of sect. 45 with regard to serving notices on the trustees of an intention to exercise the powers of sale, &c., are of course inapplicable to this case.

Discretion. Where a testator gave power to trustees at the request of an infant's guardians to sell land and invest, and upon such request one of the trustees was willing to sell, but the other refused, it was held that the Court would not interfere with the discretion of the refusing trustee. *Marquis Camden v. Murray*, 29 W. R. 190.

Accumulation of surplus income. Where a mining lease is granted, a part of the rent, and on a cutting of timber, a part of the proceeds of the sale thereof, is to be set aside (sects. 11, 35, *ante*, pp. 39, 73), and the remainder of such rents and proceeds are to go as rents and profits; and, in the case of the exercise of these powers on behalf of an infant, will be invested and held in trust for him along with other accumulations of surplus income.

Concurrent powers. (b) Concurrent powers of granting leases on behalf of an infant tenant for life, are now vested by this Act in the trustees of the settlement, and by sect. 49 of the Settled Estates Act, 1877 (*post*, p. 235), in the infant's guardians, by which, however, is meant not testamentary guardians, but guardians appointed for the special purpose. *Re James*, L. R., 5 Eq. 334.

As to powers of trustees with regard to applying income for maintenance, &c. of infants and accumulation of the residue, see Conveyancing, &c. Act, 1881, sect. 42.

Married woman, how to be affected.

**61.—(1.)** The foregoing provisions of this Act do not apply in the case of a married woman.

(2.) Where a married woman who, if she had not been a married woman, would have been a tenant for life, or would have had the powers of a tenant for life, under the foregoing provisions of



this Act, is entitled for her separate use (*b*), or is entitled under any statute, passed or to be passed, for her separate property, or as a *feme sole*, then she, without her husband, shall have the powers of a tenant for life under this Act.

(3.) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act (*c*).

(4.) The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised.

(5.) The married woman may execute, make and do all deeds, instruments and things necessary or proper for giving effect to the provisions of this section.

(6.) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act (*d*).

(*b*) The form of words usually employed by conveyancers to settle property in favour of a married woman as separate estate is "for her sole and separate use;" or the words "separate use" may be used alone, but the word "sole" has not a fixed technical meaning, and will not "*per se*" necessarily create a separate use. *Massy v. Rowan*, L. R., 4 H. L. 294. Any other expressions which clearly denote an intention to exclude the husband will effectually create a trust for separate use. See Lewin on Trusts (7th ed.), pp. 642 *et seq.*, and the cases there cited.

Separate  
use.

By the Married Women's Property Act, 1882, sect. 2, it is enacted that every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property, and to dispose of in manner aforesaid, all

45 & 46  
Vict. c. 75.  
Property  
of a woman

married after the Act to be held by her as a feme sole.

Property acquired after the Act by a woman married before the Act to be held by her as a feme sole.

Saving of existing settlements, and the power to make future settlements.

Husband lunatic:

Restraint on anticipation.

Tenant for life, lunatic (e).

real and personal property which shall belong to her at the time of her marriage or shall be acquired by or devolve upon her after marriage.

And by sect. 5, every woman married before the commencement of this Act shall be entitled to have, and to hold, and to dispose of in manner aforesaid, as her separate property, all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid.

And by sect. 19, nothing in this Act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached, or to be hereafter attached, to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

(c) As to dispensation with the concurrence of a husband who is a lunatic, see 3 & 4 Will. 4, c. 74, s. 91; and see sect. 62, note (e), *infra*.

A similar provision is contained in the Settled Estates Act, 1877, s. 50, *post*, p. 236; and in the Conveyancing Act, 1881, s. 39, power is given to the Court, notwithstanding a restraint on anticipation, to bind the interest of a married woman where it appears to be for her benefit.

(d) By this clause a married woman is empowered, notwithstanding a restraint on anticipation, to effect sales, exchanges, &c. of the settled land, or to grant leases thereof, or charge it for purposes authorized by the Act, and exercise other powers thereby given; but inasmuch as the capital moneys arising from any dealing with the settled land becomes subject to the trusts of the settlement (sect. 22, sub-s. 5, *ante*, p. 55), the restraint on anticipation will attach to the interest of the married woman in the income arising from investment of the capital money, or from the leases granted, or otherwise under the Act.

**62.** Where a tenant for life, or a person having the powers of a tenant for life under this Act, is a lunatic, so found by inquisition, the committee of

his estate may, in his name and on his behalf, under an order of the Lord Chancellor, or other person intrusted by virtue of the Queen's sign manual with the care and commitment of the custody of the persons and estates of lunatics, exercise the powers of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate.

(e) It has been held that where an infant is of unsound mind the case falls within the ordinary jurisdiction of the court. *Re Arrowsmith*, 6 W. R. 742; 4 Jur., N. S. 1122; *Re Edwards*, 10 Ch. D. 605.

Infant lunatic.

By 18 & 19 Vict. c. 13, s. 1, the Lord Chancellor in matters of lunacy is enabled to empower committees of estates of lunatic tenants in tail to grant leases binding on their issue and the remainderman.

Leases by lunatic tenants in tail.

By the Fines and Recoveries Act, 3 & 4 Will. 4, c. 74, s. 91, it was provided that the Court of Common Pleas in the case of a husband being a lunatic (whether so found by inquisition or not) may dispense with his concurrence in any case in which his concurrence is required by that Act or otherwise, except where the Lord Chancellor or other persons entrusted with lunatics, or the Court of Chancery shall be protector of a settlement in lieu of the husband. In order to obtain the order of the Court it must be shown that the land is actually contracted to be conveyed. *Re Graham*, 13 W. R. 782. See also as to orders dispensing with concurrence of a lunatic husband, *Re Murphy*, 4 Man. & G. 635; *Re Turner*, 3 C. B. 166.

Dispensation with concurrence of lunatic husband.

## XV.—SETTLEMENT BY WAY OF TRUSTS FOR SALE.

**63.**—(1.) Any land, or any estate or interest in land, which under or by virtue of any deed, will, or agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, is subject to a trust or direction for sale (g) of that land, estate, or

Provision for case of trust to sell and re-invest in land (f).

interest, and for the application or disposal of the money to arise from the sale, or the income of that money, or the income of the land until sale, or any part of that money or income (*h*), for the benefit of any person for his life, or any other limited period, or for the benefit of two or more persons concurrently (*i*) for any limited period, and whether absolutely, or subject to a trust for accumulation of income (*k*) for payment of debts or other purpose, or to any other restriction, shall be deemed to be settled land, and the instrument or instruments under which the trust arises shall be deemed to be a settlement; and the person for the time being beneficially entitled to the income of the land, estate, or interest aforesaid until sale, whether absolutely or subject as aforesaid, shall be deemed to be tenant for life thereof; or if two or more persons are so entitled concurrently, then those persons shall be deemed to constitute together the tenant for life thereof; and the persons, if any, who are for the time being under the settlement trustees for sale of the settled land, or having power of consent to, or approval of, or control over the sale, or if under the settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act are for purposes of this Act trustees of the settlement.

(2.) In every such case the provisions of this Act referring to a tenant for life, and to a settlement, and to settled land, shall extend to the person or persons aforesaid, and to the instrument or instruments under which his or their estate or

---

interest arises, and to the land therein comprised, subject and except as in this section provided (that is to say) :

- (i) Any reference in this Act to the predecessors or successors in title of the tenant for life, or to the remaindermen, or reversioners or other persons interested in the settled land, shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from sale of the land, or the income of that money, or the income of the land, until sale (as the case may require).
- (ii) Capital money arising under this Act from the settled land shall not be applied in the purchase of land unless such application is authorized by the settlement in the case of capital money arising thereunder from sales or other dispositions of the settled land, but may, in addition to any other mode of application authorized by this Act (1), be applied in any mode in which capital money arising under the settlement from any such sale or other disposition is applicable thereunder, subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement.
- (iii) Capital money arising under this Act from the settled land and the securities in which the same is invested; shall not for any purpose of disposition, transmission,

or devolution, be considered as land unless the same would, if arising under the settlement from a sale or disposition of the settled land, have been so considered, and the same shall be held in trust for and shall go to the same persons successively in the same manner, and for and on the same estates, interests, and trusts as the same would have gone and been held if arising under the settlement from a sale or disposition of the settled land, and the income of such capital money and securities shall be paid or applied accordingly (*m*).

- (iv) Land of whatever tenure acquired under this Act by purchase, or in exchange, or on partition, shall be conveyed to and vested in the trustees of the settlement, on the trusts, and subject to the powers and provisions which, under the settlement or by reason of the exercise of any power of appointment or charging therein contained, are subsisting with respect to the settled land, or would be so subsisting if the same had not been sold, or as near thereto as circumstances permit, but so as not to increase or multiply charges or powers of charging.

Trusts for sale.

Consent of tenant for life.

(*f*) As to the duties of trustees for sale of land, see Lewin on Trusts (7th ed.), ch. xviii, p. 388.

(*g*) By sect. 56 (2), *ante*, p. 106, the consent of a tenant for life is, notwithstanding anything in the settlement, rendered necessary to the exercise of any power conferred by the settlement exercisable for any purpose provided for in this Act. This provision will include an imperative power of sale given to trustees, which leaves them no discretion whether they will

exercise it or not. Such imperative powers being virtually regarded by the Court as trusts (*Brown v. Higgs*, 8 Ves. 574; *Att.-Gen. v. Lady Downing*, Wilm. 23), it may perhaps be doubted whether it would not be too narrow a construction to hold that the provision above referred to does not apply to trusts for sale; see the observations in note (u) to *Dav. Conv.* iii. p. 565, with regard to a similar question arising out of the construction of 23 & 24 Vict. c. 145, s. 1. Accordingly serious questions may not improbably arise as to the exercise by trustees of imperative powers or trusts for sale of land, as to which see note (k), *ante*, p. 43.

This section was not contained in the original draft of the bill, and throughout shows a keen desire to defeat every device which the ingenuity of conveyancers might discover, and make use of to evade the provisions of this Act.

Trustees having a power of sale, exercisable with the consent of the tenant for life, may properly sell to the tenant for life himself. *Howard v. Ducane*, Turn. & Russ. 81.

(h) In the case of a trust for sale of land, and for payment out of the rents and profits until sale, and afterwards out of the income, of an annuity, and subject thereto for accumulation of the residue of the income, the annuitant will apparently have all the powers of a tenant for life under this Act over the trust property; not so in a settlement of land as realty, see note (d) to sect 2, *ante*, p. 22.

Trust for sale, accumulation of income.

(i) The words seem, in the case of a gift of land on trust for sale, to give to the holder of an annuity, payable out of the income of the property, all the powers of a tenant for life under this Act, concurrently with the person or persons entitled to the residue of the income.

Annuity.

(k) By the Thellusson Act (39 & 40 Geo. 3, c. 98), the period during which rents and profits may be accumulated is restricted to the life or lives of any grantor or grantors, settlor or settlors; or the term of twenty-one years from the death of the grantor, settlor, deviser, or testator; or during the minority or respective minorities of any person or persons who shall be living or in *ventre sa mère* at the time of the death of the grantor, deviser, or testator; or during the minority or respective minorities of any person or persons who, under the uses or trusts of the deed, surrender, will, codicil, or other assurance directing such accumulation, would, for the time being, if of full age, be entitled unto the rents, issues, and profits or the interest, dividends, or annual produce so directed to be accumulated." See further as to trusts for accumulation, *Lewin on Trusts*, pp. 78 *et seq.*

Thellusson Act.

(l) As to investments of capital money authorized by this Act, see sect. 21, *ante*, p. 51. The investment or other application of the money is to be made according to the direction of the tenant for life, and, when made, is not to be altered without his consent. Sect. 22, *ante*, p. 54.

Investments.

(m) As to the doctrine of constructive conversion of money into land and land into money, see *Lewin on Trusts* (7th ed.), ch. xxx, s. 1, p. 801; *Jarman on Wills* (4th ed.), pp. 584 *et seq.*

Conversion.

## XVI.—REPEALS.

Repeal of  
enact-  
ments in  
schedule.

**64.**—(1.) The enactments described in the schedule to this Act are hereby repealed (n).

(2.) The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act; nor shall the same affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, or of any order made, before the commencement of this Act; nor shall the same affect any action, proceeding or thing then pending or uncompleted; and every such action, proceeding and thing may be carried on and completed as if there had been no such repeal in this Act.

Enact-  
ments re-  
pealed.

(n) The enactments repealed by this section are Parts I. and IV. of Lord Cranworth's Act (23 & 24 Vict. c. 145), being so much of the Act as is not repealed by the Conveyancing Act, 1881, and sect. 17 of the Settled Estates Act, 1877. Part I. (sects. 1—10) of Lord Cranworth's Act empowered trustees, with the consent of the tenant for life, to effect sales and exchanges of the settled estate, and to convey the same, and to apply the proceeds of sales, &c. in the purchase of other lands or in payment of incumbrances, and until purchase to invest at interest, and also to obtain renewals of settled renewable leaseholds. These powers are now superseded by the far more extensive powers of sale, &c. given to tenants for life directly by this Act. Part IV. contained general provisions, which are also now superseded by this Act.

Sect. 17 of the Settled Estates Act, 1877, provided that the Court might sanction proceedings taken by trustees for the protection of the estate, and is virtually re-enacted by sect. 36 of this Act, which extends the power of sanction to "actions or proceedings taken or proposed to be taken for recovery of lands, being or alleged to be subject to the settlement."



## XVII.—IRELAND.

**65.**—(1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section provided. Modifica-  
tions re-  
specting  
Ireland.

(2.) The Court shall be Her Majesty's High Court of Justice in Ireland.

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but General Rules under this Act for Ireland may direct that those matters or any of them be assigned to the Land Judges of that Division.

(4.) Any deed inrolled under this Act shall be inrolled in the Record and Writ Office of that Division (o).

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, at any time after the passing of this Act, to take effect on or after the commencement of this Act. 40 & 41  
Vict. c. 57.

(6.) The several Civil Bill Courts in Ireland shall, in addition to the jurisdiction possessed by them independently of this Act, have and exercise the power and authority exerciseable by the Court under this Act, in all proceedings where the property, the subject of the proceedings, does not exceed in capital value five hundred pounds, or in annual value thirty pounds.

(7.) The provisions of Part II. of the County Officers and Courts (Ireland) Act, 1877, relative 40 & 41  
Vict. c. 56.

to the equitable jurisdiction of the Civil Bill Courts, shall apply to the jurisdiction exerciseable by those Courts under this Act.

(8.) Rules and orders for purposes of this Act, as far as it relates to the Civil Bill Courts, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act, in manner prescribed by section seventy-nine of the County Officers and Courts (Ireland) Act, 1877 (*p*).

(9.) The Commissioners of Public Works in Ireland shall be substituted for the Land Commissioners.

(10.) The term for which a lease other than a building or mining lease may be granted shall be not exceeding thirty-five years (*q*).

Inrolment  
of deeds.

(*o*) As to deeds inrolled under this Act, see sect. 16 (*iii*), *ante*, p. 44.

Rules and  
orders.

(*p*) By 40 & 41 Vict. c. 56, s. 79, the Lord Chancellor with the concurrence of the chairman, or any five of them, to be selected at a meeting of the chairmen convened for the purpose, or in default of such selection to be nominated by the Lord Chancellor, or the major part of such five, may make rules and orders for regulating the practice of the Civil Bill Courts and prescribing the forms of proceedings therein, &c., and may from time to time amend such rules, orders and forms; and every such rule, order and form certified under the hands of the Lord Chancellor and any five of the chairmen shall take effect from and after such day as shall be therein named.

Judicial  
leases  
under  
44 & 45  
Vict. c. 49.

(*q*) By the Land Law (Ireland) Act, 1881, s. 10, landlords and tenants may agree, the one to grant and the other to accept judicial leases for terms of thirty-one years and upwards. And such leases "if sanctioned by the Court (*i.e.*, the Civil Bill Court, sect. 37), after considering the interest of the tenant, and where such a lease is made by a limited owner, the interest of all persons entitled to any estate or interest in the holding subsequent to the estate or interest of such limited owner," will, during their continuance, exclude the provisions of the Act. And by sects. 11, 12 of the same Act landlords and tenants may agree for the conversion of ordinary tenancies into fixed tenancies upon such conditions as may be agreed upon, at a fee farm rent, which may or may not be subject to

Fixed  
tenancies.

re-valuation by the Court, at such intervals of not less than fifteen years, as may be agreed upon; in the case of a landlord, who is a limited owner, the conditions of the conversion must be approved by the Court.

As to the power of limited owners of land in Ireland to sell holdings to tenants, leaving one-fourth of the price on mortgage, see sect. 25 of the Land Law (Ireland) Act, 1881. Sale of holdings.

### THE SCHEDULE.

Sect. 64.

#### REPEALS.

23 & 24 Vict. c. 145..	An Act to give to trustees, mortgagees, and others, certain powers now commonly inserted in settlements, mortgages, and wills .....	} in part; namely—
in part.		

#### Parts I. and IV.

(being so much of the Act as is not repealed by the Conveyancing and Law of Property Act, 1881).

27 & 28 Vict. c. 114..	The Improvement of Land Act, 1864,
in part.	in part; namely,—
	Sections seventeen and eighteen :
	Section twenty-one, from “either by a party” to “benefice) or” (inclusive); and from “or if the land owner” to “minor or minors” (inclusive); and “or circumstance” (twice) :

Except as regards Scotland.

40 & 41 Vict. c. 18...	The Settled Estates Act, 1877..	in part;
in part.	namely—Section seventeen.	

### CHAPTER III.

#### THE IMPROVEMENT OF LAND ACT, 1864.

(27 & 28 VICT. c. 114.)

[29th July, 1864.]

WHEREAS an Act was passed in the twelfth and thirteenth years of her present Majesty, intituled, "An Act to promote the Advance of Private Money for Drainage of Lands in Great Britain and Ireland," and several companies have been incorporated by Act of Parliament, with special powers for promoting the improvement of land in Great Britain and Ireland by drainage and otherwise; and it is desirable to amend and consolidate the law relating to the improvement of land by owners of limited interests, and to enable such owners to charge their lands with money subscribed for the construction of railways and navigable canals which will permanently increase the value of such lands: Be it enacted, &c.

12 & 13  
Vict. c.100.

1. [This section repeals "The Private Money Drainage Act, 1849," except as relates to pending applications.]

And with regard to the commissioners for the execution of this Act, and other general matters, be it enacted as follows:—

2. [Virtually repealed by Settled Land Act, 1882, s. 48 (r).]

Recited  
Act.  
12 & 13  
Vict. c.100,  
repealed.

Interpre-  
tation of  
"the com-  
mission-  
ers."

(r) The Land Commissioners constituted by the Settled Land

Act, 1882, s. 48, are substituted for the Inclosure Commissioners, to whom the carrying into execution of this Act was committed.

**3.** All the provisions of the Act of the ninth and tenth years of the reign of her present Majesty, intituled, "An Act to authorize the Advance of Public Money to a Limited Amount to promote the Improvement of Land in Great Britain and Ireland by Works of Drainage," and of any and every other Act for the time being in force relating to any of the aforesaid commissioners, so far as the same may concern or be auxiliary to the proceedings or inquiries of the commissioners under the authority of such Acts or any of them, or the authentication of instruments, shall, except as in this Act otherwise provided, extend and be applicable to their proceedings and inquiries, and the authentication of instruments, under this Act.

Provisions of 9 & 10 Vict. c. 101, &c. to extend and be applicable to proceedings of commissioners (s).

(s) These provisions relate to drainage only, but are otherwise virtually identical with the corresponding provisions of this Act.

**4.** Every assistant commissioner or inspector acting in any matter, inquiry, or proceeding by the authority and in the execution of this Act may receive declarations and statements, and examine upon declaration all such persons as may voluntarily attend before him in such matter, inquiry, or proceeding.

Assistant commissioners may take declarations and examine witnesses (t).

(t) The commissioners have no power to compel the attendance of witnesses. See also 9 & 10 Vict. c. 101, s. 11.

**5.** If any person shall wilfully give false evidence in any matter, inquiry, or proceeding under

Punishment of persons

giving  
false evi-  
dence.

the provisions of this Act, or shall make or subscribe a false statement or declaration for the purposes of this Act, such person shall, in England or Ireland, be deemed guilty of a misdemeanor, and in Scotland of a crime and offence, and shall be punished accordingly.

As to  
service of  
notices on  
commis-  
sioners.

6. Any notice requiring to be served upon the commissioners may be served by the same being left at or transmitted through the post, directed to their office in London (u).

(u) The present office of the commissioners is at No. 3, St. James's Square.

As to the  
services of  
notices on  
other  
persons.

7. In all cases in which it shall be necessary under the provisions of this Act to serve any notice upon any other person, it shall be sufficient to send such notice in a registered post letter, directed to such person at his then or last known place of residence or of business, unless the letter containing such notice shall be returned from the post office as undelivered; and if such person shall not have any place of residence or of business within Great Britain or Ireland, or if the place of business or of residence of such person cannot with due diligence be ascertained, then such notice may be served upon such other person as his representative, or be given in such other manner as the commissioners shall in such case direct or approve.

Interpre-  
tation of  
"land-  
owner."

8. The word "landowner" shall mean herein, as to lands in England, the person who shall be in the actual possession or receipt of the rents or

profits of any land, whether of freehold, copyhold, customary, or other tenure, except where such person shall be a tenant for life or lives holding under a lease for life or lives not renewable, or shall be a tenant for years holding under a lease or an agreement for a lease for a term of years not renewable, whereof less than twenty-five years shall be unexpired at the time of making any application to the commissioners, without regard to the real amount of the interest of any person so excepted; and in the case where the person in the actual possession or receipt of the rents or profits of any land shall fall within the above exceptions, then the person who for the time being shall be in the actual receipt of the rent payable by the person so excepted, unless he shall also fall within the above exceptions, shall, jointly with the person who shall be liable to the payment thereof, be deemed for the purposes of this Act to be the owner of such land; and as to lands in Scotland, the word "landowner" shall denote and include every fiar, liferenter, or heir of entail who shall be in the actual possession of the land, or in receipt of the rents payable on the tacks, leases, or tenancies of the tenants in the actual possession thereof; and as to lands in Ireland, the word "landowner" shall mean such person as under the Act passed in the first and second years of the reign of her present Majesty, intituled "An Act to abolish Compositions for Tithes in Ireland, and to substitute Rentcharges in lieu thereof," shall have the first estate of inheritance, or other estate or interest equivalent to a perpetual estate or interest therein,

1 & 2 Vict.  
c. 109.

and also any tenant in dower or by the curtesy, or any person having under the limitations of any settlement by deed, will, Act of Parliament, or otherwise any estate for life, or other particular estate thereby created or limited out of or in any estate of inheritance, or by, out of, or in any such estate or interest as by or under the last-mentioned Act is to be deemed equivalent to a perpetual estate or interest; and as to lands in any part of the United Kingdom, the word "landowner" shall include a corporation, and also such persons as are empowered by the twenty-third section hereof.

Interpre-  
tation of  
"improve-  
ment of  
land" (v).

9. [This section is virtually repealed by the Settled Land Act, 1882, s. 30.]

(v) By sect. 30 of the Settled Land Act, 1882, the enumeration of improvements contained in sect. 9 of this Act is extended so as to comprise all improvements authorized by the Settled Land Act, and which are enumerated in sect. 25 thereof, *ante*, p. 59.

As to the erection or enlargement of mansion houses on settled lands, see the Limited Owners Residences Acts, 1870 and 1871 (33 & 34 Vict. c. 56; 34 & 35 Vict. c. 84). And as to the construction of reservoirs, see the Limited Owners Reservoirs, &c. Act, 1877 (40 & 41 Vict. c. 31), *ante*, p. 62.

Interpre-  
tation of  
"person."

10. The word "person" shall in this Act include companies and all other corporations.

And with regard to the proceedings preliminary to the sanction of any improvements, be it enacted as follows :

Applica-  
tion to  
commis-  
sioners to  
sanction  
improve-  
ments.

11. When any landowner shall be desirous of borrowing or advancing money under this Act for the improvement of his land, he shall make an application to the commissioners to sanction the



proposed improvements in such manner and form and stating such particulars as the commissioners shall from time to time direct; and until the proposed improvements shall have been sanctioned by the commissioners in manner hereinafter mentioned (*w*), the application may be withdrawn or altered, or consolidated with any other application, at the pleasure of the applicant, but without prejudice to his liability as hereinafter mentioned for the expenses incurred by the commissioners or their officers in consequence of his application.

(*w*) See sects. 25—29, pp. 137—141.

**12.** Any two or more landowners may, with the consent of the commissioners, join in an application to them to sanction the improvement of the lands of such landowners respectively, but the sum to be charged in pursuance of any such joint application shall be apportioned so that a separate and distinct sum may become charged on the land of each landowner.

Joint application by several landowners.

**13.** The commissioners may from time to time frame and circulate, as they shall see occasion, forms indicating the particulars of the information to be furnished to them by landowners for the purposes of this Act, and such other forms as the commissioners may deem expedient for facilitating any proceedings under this Act.

Commissioners may issue forms (*x*)

(*x*) Forms issued by the commissioners under this section will be found *post*, p. 189.

**14.** The commissioners may require security to be given to them by the landowner, by bond, de-

require security for expenses;

posit, or otherwise, in such form as they may think fit, for the payment to them of the expenses which they or their officers shall incur in respect of the investigation on any application, and, if they shall issue such provisional or other sanctioning order as hereinafter mentioned, of the expenses which they or their officers shall incur in inspecting and ascertaining the due execution of the works ; but unless the commissioners shall issue such absolute order as hereinafter mentioned, such payment shall not be a charge on the land to which such application relates, but shall be a debt due by the person making such application to the commissioners, and shall be recoverable by them as in the nature of a crown debt (y).

(y) By 28 & 29 Vict. c. 104, s. 48, it is provided that no crown debts incurred after the commencement of that Act (1st of November, 1865) shall affect land as to a *bonâ fide* purchaser or mortgagee, whether such purchaser or mortgagee have notice or not, unless a writ of process of execution has been issued and registered before the execution of the conveyance or mortgage to such purchaser or mortgagee, and the payment by him of the purchase or mortgage money. As to the mode of registration of the writ, see Will. R. P., pp. 96, 503, 14th edition.

A crown debt with regard to which a writ has been duly issued and registered will take precedence of other debts of whatever nature. See further as to crown debts, Williams on Executors, pp. 60 *et seq.*

cause  
application  
to be in-  
vestigated;

15. If the commissioners shall think fit to entertain the application so made to them, they may cause the land to be inspected and examined by an assistant commissioner, or an engineer or surveyor, who shall have regard to and examine the proposals and statements contained in such application, and shall report his opinion thereon, and who shall also report whether in his judgment the

proposed improvements will effect a permanent increase of the yearly value of the land exceeding the yearly amount proposed to be charged thereon in respect of the improvements applied for; and the commissioners may by themselves, or any assistant commissioner, engineer, or surveyor, make such other inquiries in relation to any such application as they shall think fit: provided that the above requisition as to increased annual value shall not apply to any outlay proposed to be made upon or in respect of planting only.

16. The commissioners shall have power to require such alterations as they shall think expedient to be made in the improvements proposed, or in the proposed mode of executing them. and require proposed improvements to be modified.

[17. Before the commissioners shall sanction any improvements, notice shall be given of the application as well by advertisement inserted in two successive weeks in some newspaper published in the county in which the land to be improved lies, or in case there shall be no such newspaper published in such county then in some county adjoining thereto, as by a notice in writing given, where such lands are situate in England or Ireland, to every person entitled to any estate in such land, or any part thereof, in reversion or remainder, up to and inclusive of the person entitled to the first vested estate of inheritance therein, and to every person entitled to any mortgage upon such land or any part thereof who by reasonable inquiry shall be known to be so interested, and given, Advertisements and notices preliminary to sanction.

[where such lands are situate in Scotland, to the nearest heir or heirs of entail, not exceeding three, and to the holders of every heritable security on such lands appearing upon the records; and in such advertisements and notices respectively shall be stated the maximum amount which it is proposed to charge in respect of the improvements, and the greatest and least terms over which it is proposed that the rentcharge should be spread; and the commissioners shall not sanction the improvements until one month shall have elapsed from the publication of the second of such advertisements and the service of such notices (if any) respectively, of which publication, and of the service of all necessary notices as aforesaid, the landowner shall, if required by the commissioners, satisfy them by one or more statutory declarations made by him or on his behalf.

Power of dissent by persons interested, and protection of landowner's infant children.

[18. In case any person having any estate in or charge or security on the land to be improved shall within the month named in the last preceding section signify in writing to the commissioners his dissent from such application, stating therein the nature of his estate in or charge or security on such land, the commissioners shall certify such dissent to the landowner by whom the application was made, and shall not make any provisional or other order sanctioning the improvements unless or until such dissent be withdrawn, or an order be made by the High Court of Chancery in England or Ireland respectively, or by the Court of Session in Scotland, in manner hereinafter provided, autho-

[rizing the commissioners to sanction the same; nor shall they make any provisional or other order sanctioning the improvement of any land in the case of which the landowner, or the husband of the landowner, shall be the father of the person or persons entitled either at law or in equity to any estate in such land, or any part thereof, in reversion or remainder, up to and inclusive of the person entitled to the first vested estate of inheritance, and such person or persons, or any of them, shall be an infant or infants, or a minor or minors, unless or until such an order as hereinbefore mentioned shall be made by such Court as aforesaid] (a).

(a) The two preceding sections are repealed, except as regards Scotland, by sect. 64 of the Settled Land Act, 1882, *ante*, p. 120. The repeal is not retrospective, and does not affect any rights or obligations incurred or things done before the commencement of that Act. It has therefore been thought well to retain them in the text.

19. If the commissioners shall consider that any proposed improvement would interfere with any navigable river or canal respectively vested in or under the management or control of any commissioners, trustees, conservators, undertakers, company, or other body or individuals, or the banks, or other works or conveniences thereof, or would occasion the flow or discharge into such river or canal of any drainage or other matter, the landowner shall give notice of the application in writing, together with a plan and section of the proposed improvement, to such commissioners, trustees, conservators, undertakers, company or other body, or individuals; and in case they shall, within one month after the receipt of such notice, signify in writing to the commissioners their dissent from

The same in case of navigable rivers and canals.

such application, and state the nature of their interest in or authority over such river or canal, the commissioners shall certify such dissent to the landowner by whom the application was made, and shall not sanction the improvement unless or until such dissent be withdrawn, or an order be made by the High Court of Chancery in England or Ireland respectively, or by the Court of Session in Scotland, in manner hereinafter provided, authorizing the commissioners to sanction the improvement.

20. [This section relates to church land.]

In case of dissent, or when landowner's infant children are to be protected, Court of Chancery or Session may authorize commissioners to proceed.

21. If and when any dissent from any such application to the commissioners for their sanction of proposed improvements shall have been notified in writing to the commissioners, [*either by a party interested in the lands proposed to be improved (not being lands held in right of any church, chapel or other ecclesiastical benefice), or*] by the commissioners, trustees, company or other body or individuals interested in any river or canal which would or might be interfered with as hereinbefore mentioned, [*or if the landowner, or the husband of the landowner, shall be the father of the person or persons entitled either at law or in equity to any estate in the land to be improved, or any part thereof, in reversion or remainder, up to and inclusive of the person entitled to the first vested estate of inheritance, and such person or persons, or any of them, shall be an infant or infants, or a minor or minors,*] the landowner desiring such improvements may apply to the High Court of

Chancery in England or Ireland, where such lands are situate in England or Ireland respectively, or to the Court of Session, where such lands are situate in Scotland, for an order of such Court authorizing the commissioners to entertain and proceed upon the application for such proposed improvements, notwithstanding such dissent [*or circumstance*]; and such application shall be made, as to lands in England, to the Master of the Rolls, or any one of the Vice-Chancellors sitting at Chambers, by summons, calling on the party dissenting to show cause why such order should not be made; as to lands in Ireland, to the Master of the Rolls, by summary petition or otherwise, as he shall by any general order direct; and as to lands in Scotland, to either division of the Court of Session in time of session, or to the Lord Ordinary sitting on bills in time of vacation, by summary petition; and the Court or single judge, as the case may be, to whom such application shall be made, shall hear and determine such application, and for that purpose shall have power to make or direct to be made all such inquiries, and receive and entertain all such statements and evidence, on oath or by affidavit, as such Court or judge may consider necessary or desirable, or as may be produced before them or him; and if, upon a consideration of all the circumstances, such Court or judge shall be of opinion that the commissioners should entertain and proceed upon such application, an order shall be made authorizing and requiring them to proceed thereon, and to deal with the same according to the provisions of this Act authorizing them in that behalf, notwithstanding

such dissent [*or circumstance*] as aforesaid: provided that if at any time after notification of such dissent, and before any such order shall have been applied for and made as aforesaid, such dissent shall be withdrawn by a like notification in writing, it shall not be necessary to make or proceed with such application, or to obtain such order (*a*).

(*a*) The words in italics are repealed, except as regards Scotland, by sect. 64 of the Settled Land Act, 1882, *ante*, p. 120. The repeal does not affect anything done before the commencement of that Act.

Service of notice under preceding clause.

**22.** Where any party dissenting shall be out of the jurisdiction of the Court, it shall be lawful for the Court or judge to order service to be made in such manner as such Court or judge may think fit, and upon proof to the satisfaction of such Court or judge that such party has had actual notice within a reasonable time of such intended application, it shall be lawful for such Court or judge thereupon to hear and determine such application.

And costs may be given by the Court.

**23.** The costs of and incidental to every application under the twenty-first and twenty-second sections, and the mode in which such costs shall be settled or taxed, shall be in the discretion of the Court or judge who shall hear such application, and if such Court or judge shall so direct, the said costs shall be deemed to be part of the expenses of and incidental to the application for the proposed improvements.

Representation of persons under dis-

**24.** All husbands, guardians, tutors, committees, curators, feoffees, trustees, judicial factors, executors, and administrators shall respectively



have the same rights and powers of making applications and signifying dissents, and taking other proceedings under this Act, as their respective wives, infants, minors, lunatics, idiots, and furious or fatuous persons would have had if free from disability, or as such feoffees, trustees, judicial factors, executors, or administrators respectively would have had if the estates, charges, or interests of which they shall be such feoffees, trustees, or judicial factors, or which shall be vested in them as such executors or administrators, had been vested in them in their own right; but no guardian, tutor, committee, curator, feoffee, trustee, judicial factor, executor, or administrator shall be in anywise compelled or obliged to signify a dissent from any application under this Act, or be in anywise responsible for the consequences of such application, or of any charge made in pursuance thereof.

ability for applications and dissents under preceding clauses.

And with regard to the sanction of any improvements, and the rights arising thereunder, be it enacted as follows:

**25.** If the commissioners shall find that the proposed improvements, or any part thereof, whether with or without any alterations by them required or sanctioned, would effect a permanent increase of the yearly value of the lands proposed to be improved, or of any part thereof, exceeding the yearly amount proposed to be charged thereon, they shall sanction such improvements, or such part thereof as they shall think expedient, if under the preceding sections it shall be lawful for them so to do, by an order under their hands and seal;

Commissioners' order sanctioning improvements.

and they shall by the same order fix the rate of interest to be allowed on the cost of the sanctioned improvements, having regard to the market value of money at the time, but such interest shall never exceed five per cent. per annum.

Forms of orders sanctioning improvements to be prepared by commissioners; what they must contain (z).

**26.** The commissioners shall from time to time prepare forms of orders for sanctioning improvements, and shall also, whenever required by the landowner so to do, frame and entitle their said orders under this Act in such manner that they may also be and operate as provisional, sanctioning or other corresponding orders under the respective Acts applying to any company with which he may have contracted relating to the loan or improvements in question: provided that every order operating under this Act to sanction any improvements shall name the landowner to whom it is issued; shall express the greatest sum to be charged in addition to any costs, charges and expenses under the fiftieth section hereof, and the rate of interest and term of years for the repayment thereof, the former not exceeding five per centum per annum, and the latter not exceeding twenty-five years; shall specify the lands on which such repayment is to be charged; and shall either express or refer to some contract or other document expressing the general scheme of the improvements to be executed.

(z) For forms of orders sanctioning improvements, see *post*, p. 183.

They may be called provisional

**27.** Every order operating under this Act alone to sanction any improvement may be in the form

set forth in Schedule (A.) hereto, and shall be called a provisional order, and shall, subject to the following section hereof, create in favour of the landowner named therein the title to an absolute charge on the completion of the sanctioned improvements, which title such landowner may assign, either absolutely or by way of security, to any person; and such assignment may be made by endorsement on the provisional order.

orders, and may be assigned to parties agreeing to execute improvements.

**28.** In case of the death of any landowner, or the determination of his interest, between the date of the provisional order and the completion of the improvements sanctioned thereby, the right to complete such improvements, and to assign the title to an absolute charge, shall pass to the succeeding landowner; but if the succeeding landowner shall not within three calendar months after his succession proceed with the works, so as to complete the same in conformity with the provisional order, the preceding landowner, or in case of his decease his executors or administrators, may complete such improvements, and shall become entitled to have the absolute charge executed to him or them. If the succeeding landowner shall complete the improvements there shall be distinct absolute charges executed to such landowner, and the preceding landowner or his personal representatives, for the outlay made by the preceding and succeeding landowners respectively, and in case of difference the commissioners shall determine the proportions; provided that the succeeding landowner may, with the sanction of the

Provision for death of landowner pending completion of improvements.

Inclosure Commissioners, and after notice to the parties to whom notice was originally given, or such of them as may be living, and such other persons, if any, as the commissioners may direct, terminate the proceedings under the provisional order, on payment of the outlay and expenses made thereunder, and indemnifying the person to whom the title to the absolute charge may have been assigned. Notwithstanding the foregoing provisions, if the title to an absolute charge shall have been assigned by the preceding landowner, the assignee may complete the improvements if he shall proceed therewith within one calendar month from the time the preceding landowner ceased to be such landowner.

Provi-  
sional  
orders may  
be modi-  
fied.

**29.** The commissioners may from time to time, on application to be made by the landowner, and after such inquiry as they shall think fit, sanction any modifications or alterations either of the scheme of the improvements or of any other matter expressed or referred to in the provisional order: provided that no such modification or alteration shall increase the sum to be charged in respect of the improvements, or extend or curtail the term of repayment, beyond the greatest amount which it was proposed so to charge, or the greatest or least term over which it was proposed that the rentcharge should be spread, as respectively stated in the advertisement and notices hereinbefore required: provided also, that every such modification or alteration shall require the consent of every party who, by having contracted for the execution

of the improvements, or by having taken an assignment of the title to an absolute charge, or otherwise, may be interested therein; and the modifying order shall be in such form as the commissioners shall from time to time appoint, and shall be construed together with the original order as one order with respect to all rights arising thereunder after the date of the modifying order.

And with regard to the execution of any improvements, be it enacted as follows:

**30.** Before the commencement of any improvements sanctioned in manner aforesaid the landowner shall deliver to the commissioners a detailed specification thereof, and in the case of buildings, and also in any other case where the same shall be required by the commissioners, a detailed plan or drawing: provided that when it is not intended to complete the improvements within one year from the date of the provisional or other sanctioning order, the specification and plan or drawing first delivered may comprise so much only as it is intended to complete within one year from the said date, so, however, that for the works of each successive year such specification and plan or drawing as aforesaid be always delivered in advance.

Detailed specifications to be delivered in advance;

**31.** The specifications and plans or drawings aforesaid shall be examined, and, if necessary, the spot visited by an assistant-commissioner, or an engineer or surveyor, who shall report whether in his judgment the improvements as proposed to

and approved before execution of works (a).

be effected will be effected in a substantial and durable manner, and, in the case of farm buildings, whether the same, or the improvements thereof or additions thereto, will be suitable to the locality; and no improvement shall be commenced or proceeded with until the specifications and plans or drawings aforesaid shall have been approved by the commissioners; but nothing herein contained shall render necessary the re-delivery, re-examination, or re-approval of any detailed specifications, plans, or drawings which may have been delivered in connection with the application for the commissioners' sanction to the general scheme of the improvements, and may have been approved in connection with that sanction.

(a) The following paragraphs are taken from a circular issued by the commissioners and generally forwarded together with "forms of application":—

"In order to avoid delay, and save expense, the plans and specifications of all buildings that are intended to be proceeded with during the same year, should be sent to the commissioners at one time.

"In carrying out the buildings, no alterations or deviations of any description must be made from the plans and specifications that have been approved of by the commissioners, unless previously submitted to and sanctioned by them; the non-compliance with this direction may entail the refusal of the commissioners to grant a charge upon the estate for the cost of the buildings when completed."

Adjoining lands, or easements over them, may be sold for purpose of improvements, and conveniences over adjoining lands for the execu-

**32.** All persons interested in any lands adjoining or near to the land improved or proposed to be improved, and being, as to lands in England or Ireland by the provisions of "The Lands Clauses Consolidation Act, 1845," and as to lands in Scotland by the provisions of "The Lands Clauses Consolidation (Scotland) Act, 1845," enabled to sell and dispose of such lands so adjoining or near,

or any estate or interest therein, may, for the purpose of any improvements, authorized by this Act, sell and convey or grant to the landowner whose land has been or is proposed to be improved such lands so adjoining or near, or any part thereof, or any easement, authority, or right in, through, over, or affecting the same, and any such land, easement, authority, or right so sold and conveyed or granted shall thereupon become appurtenant to or pertinent of the lands improved or proposed so to be, and with reference to the improvements whereof the same was purchased, and shall be held upon and subject to the same uses, trusts, charges, and incidents; and all such persons as aforesaid may also make any agreement with the landowner, or with any person or company that shall have contracted for the actual execution of the improvements, or their respective agents, with reference to entering on, cutting through or into, or prejudicially affecting such lands so adjoining or near; and every such sale, conveyance, grant, and agreement shall be valid and effectual accordingly, and the price or consideration shall be settled by two surveyors or a surveyor to be appointed by them in manner provided by the ninth section of "The Lands Clauses Consolidation Act, 1845," or, as the case may be, by the ninth section of "The Lands Clauses Consolidation (Scotland) Act, 1845," and shall be deposited as directed by the same respective sections, and thenceforth become subject to the provisions of the same respective Acts.

tion of improvements contracted for (b).

(b) Limited owners have now powers under the Settled Land Act, sect. 3, to sell settled land without reference to the object for which the land sold is required, *ante*, p. 27.

Works necessary to be made on adjoining lands for execution of improvements may be made under certain Acts (c).

**33.** Whenever the commissioners shall think that it may be expedient in order to obtain or improve an outfall for draining or warping any lands under this Act, or otherwise with a view to the improvement of any lands under this Act, to enter and execute any works upon any land adjoining or near to the land proposed to be improved, where, by reason of the objection or disability of any owner, lessee, or occupier of such land, such works could not be otherwise executed, proceedings may be taken, if the said lands shall lie in England, either under the provisions of the Act of the tenth and eleventh years of the reign of her present Majesty, chapter thirty-eight, intituled "An Act to facilitate the Drainage of Lands in England and Wales," or under those of the third part of the Land Drainage Act, 1861, and, if in Scotland, under the provisions of the Act of the tenth and eleventh years of the reign of her present Majesty, chapter one hundred and thirteen, intituled "An Act to facilitate the Drainage of Lands in Scotland," but as though in such Act the Inclosure Commissioners for England and Wales had everywhere been named in place of the sheriff; and if such proceedings shall have been taken before the sanction of the improvements in question by the commissioners under this Act, the commissioners may, by their order sanctioning such improvements, declare the works in respect of which they shall have been taken to be expedient, and such works shall then be deemed to have been authorized by the commissioners or by the sheriff, as the case may be, and the provi-



sions of the said respective Acts shall apply to them accordingly.

(c) By sect. 48, sub-sect 6, of the Settled Land Act, 1882, *ante*, p. 97, the powers and authorities of the commissioners for the purpose of this Act are extended, so as to apply to the execution of all improvements authorized by statute on settled land.

As to the power of a tenant for life to enter on the settled land, for the purpose of executing or maintaining improvements, see Settled Land Act, s. 29, *ante*, p. 67.

**34.** Every provisional or modifying order shall be a full authority to the landowner or successive landowners and their representatives in the respective cases hereinbefore defined, and to all persons employed by or under contract with him or them respectively, to enter upon the lands to be improved, and any adjoining or neighbouring lands acquired or authorized to be entered under either of the two last preceding sections, and to execute in and on the same, without impeachment of waste (e) by any remainderman or reversioner, all the improvements sanctioned by the same order according to the specifications and plans or drawings approved by the commissioners, and to do, execute, and use all such acts, works, and conveniences as may be proper for making, maintaining, and using such improvements; and for the purpose of effecting any improvement under this or the recited Acts it shall be lawful to get and work freestone, limestone, clay, sand, and any other mineral or substance out of the land to be improved or charged, and to make tramroads and other ways, and to burn and make bricks, tiles, and other things to be used in effecting such improvements, and also for the same purpose to

Provisional order to protect from impeachment of waste, and to authorize getting materials from land, &c. (d).

cut down and use any timber or trees not planted or serving for shelter or ornament (*f*).

(*d*) Sect. 29 of the Settled Land Act provides for the protection of tenants for life as regards waste in execution and repair in improvements, so far as regards the settled land itself, and impeachment by remaindermen or reversioners, *ante*, p. 67.

(*e*) As to waste, see Settled Land Act, 1882, s. 29, *ante*, p. 68, note (*v*).

(*f*) As to timber, see *Lewis Bowle's case*, 11 Rep. 79 (*b*). See, also, *ante*, p. 74, note (*x*).

Saving  
rights of  
the crown.

**35.** Nothing in this Act contained shall authorize any person to purchase, take, use, or interfere with, or the commissioners to make any order with respect to any land, soil, or water, or any right in respect thereof, belonging to her Majesty in right of her crown, without the previous consent in writing of the commissioners for the time being of her Majesty's woods, forests, and land revenues or, if the property should be under the management or control of her Majesty's commissioners of works and public buildings, without the consent in writing of such last-mentioned commissioners, which consent the said respective commissioners are hereby authorized to give; and nothing in this Act contained shall divert, alter, or affect any of the rights, powers, or estates vested in her Majesty in right of her crown.

Saving  
rights of  
the com-  
missioners  
of her  
Majesty's  
works, &c.

**36.** Nothing in this Act contained shall authorize any person to purchase, take, use, or interfere with, or the commissioners to make any order with respect to any land, soil, or water, or any right in respect thereof, the management or control of which may be vested in the commissioners of her Majesty's works and public buildings on

behalf of or in trust for her Majesty or the public, without the consent in writing of the last-mentioned commissioners, which they are hereby authorized to give.

**37.** Nothing in this Act contained shall authorize any person to take, use, enter upon, or interfere with any land, soil, or water, or any rights in respect thereof, belonging to the sovereign for the time being in right of the duchy of Cornwall, without the consent in writing of some two or more of the regular officers of the said duchy, or of such other persons as may be duly authorized under the provisions of "The Duchy of Cornwall Management Act, 1863," section thirty-nine, to exercise all or any of the rights, powers, privileges, and authorities by the said Act made exerciseable or otherwise for the time being exerciseable in relation to the said duchy, or belonging to the Duke of Cornwall for the time being, without the consent of such duke, testified in writing under the seal of the duchy of Cornwall, first had and obtained for that purpose, or to take away, diminish, alter, prejudice, or affect any property, rights, profits, privileges, powers, or authorities vested in or enjoyed by the Duke of Cornwall for the time being, or in or by the sovereign for the time being in right of the duchy of Cornwall.

Saving  
rights of  
Duchy of  
Cornwall.

**38.** Nothing in this Act contained shall authorize any person to purchase, take, use, or interfere with any lands, soil, or water, or any right in

Saving  
rights of  
Duchy of  
Lancaster.

respect thereof, belonging to her Majesty, her heirs or successors, in right of the duchy of Lancaster, without the previous consent in writing of the chancellor of the said duchy of Lancaster, which consent such chancellor is hereby authorized to give, or to take away, lessen, prejudice, or alter any of the rights, privileges, powers, or authorities vested in or enjoyed by her Majesty, her heirs or successors, in right of the said duchy of Lancaster.

Saving  
rights of  
the Admiralty,  
and  
of the  
Board of  
Trade.

**39.** Nothing in this Act contained shall authorize any person to purchase, take, use, or interfere with any land, soil, or water, or any right in respect thereof, or to take away, lessen, prejudice, or alter any of the rights, privileges, powers, or authorities vested in or enjoyed by the lord high admiral, or the commissioners for the time being for executing the office of lord high admiral (hereinafter designated the Admiralty), or vested in or enjoyed by the lords of the committee of her Majesty's privy council for trade and foreign plantations (hereinafter designated the Board of Trade), without the previous consent of the Admiralty signified in writing under the hand of the secretary of the Admiralty (which consent the Admiralty are hereby authorized to give), or, as the case may be, without the previous consent of the Board of Trade signified in writing under the hand of one of the secretaries of the said board.

Plans to be  
deposited  
with

**40.** With respect to any harbour, port, bay, estuary, or navigable river, or part thereof, com-

prised in any notice from time to time given by the Admiralty under section nine of "The Harbours Transfer Act, 1862," previously to commencing any work below high-water mark there shall be deposited at the Admiralty Office plans, specifications, and working drawings thereof for the approval of the Admiralty, such approval to be signified in writing under the hand of the secretary of the Admiralty, and with respect to all other parts where the tide flows, previously to commencing any work below high-water mark there shall be deposited at the office of the Board of Trade plans, specifications, and working drawings thereof for the approval of the Board of Trade, such approval to be signified in writing under the hand of one of the secretaries of the said board, and any such work shall be constructed only in accordance with such respective approval; and when any such work shall have been commenced or constructed, it shall not be lawful at any time to alter or extend the same without obtaining, previously to making any such alteration or extension, the like respective consent and approval; and if any such work shall be commenced or completed, or be altered, extended, or constructed, contrary to the provisions of this Act, it shall be lawful for the Admiralty or the Board of Trade, as the case may require, to abate, alter, and remove the same, and to restore the site thereof to its former condition, at the cost and charge of the person or company that executed the said work, the amount of which cost and charge shall be a debt due from such person or

Admiralty  
before  
commenc-  
ing works  
below  
high-water  
mark.

company to the Crown, and be recoverable accordingly, with costs of suit (*l*).

(*l*) As to Crown debts, see *ante*, p. 130, note (*y*).

Land-owner to pay expenses of survey ordered by Admiralty.

**41.** If at any time or times it shall be deemed expedient by the Admiralty or the Board of Trade, as the case may require, to order a local survey and examination of any embankment or work proposed to be constructed under the powers of this Act in, over, or affecting any tidal or navigable water or river, or of the intended site thereof, the landowner shall defray the cost of every such local survey and examination, and the amount thereof shall be a debt due to her Majesty from the landowner, and if not paid upon demand may be recovered as a debt due to the crown (*m*), with the costs of suit, or may be recovered, with costs, as a penalty is or may be recoverable from the landowner.

(*m*) As to crown debts, see *ante*, p. 130, note (*y*).

Saving rights of her Majesty's principal Secretary of State for War.

**42.** Nothing in this Act contained shall authorize any person to purchase, take, use, or interfere with any land, soil, or water, or any right in respect thereof, or to take away, lessen, prejudice, or alter any of the rights, privileges, powers, or authorities, vested in or enjoyed by her Majesty's principal secretary of state for the War Department for the time being, without the previous consent of the same principal secretary signified in writing under his hand, which consent the said principal secretary for the time being is hereby authorized to give.

43. Nothing in this Act contained shall take away, lessen, prejudice, or alter any of the rights, privileges, powers, or authorities vested in or to be discharged by any commissioners of sewers appointed by any commission under the great seal or under the seal of the duchy of Lancaster, or in or by any other lawful commission of sewers, or the commissioners appointed under any local or private Acts of Parliament for sewers or drainage; nor shall any work be done which in any way interferes with any sewers, drains, or watercourses under the control of any commissioners of sewers; and no new sewers, drains, watercourses, or works of drainage shall be made or done under the powers of this Act within the district and jurisdiction of any such commissioners, unless the same be previously approved by those commissioners; and all such works shall be carried on and completed under the direction and control of the same commissioners and their officers; and all sewers, drains, watercourses, and works of drainage made under this Act within the district and jurisdiction of any commissioners of sewers shall be and remain subject in all respects to the jurisdiction of those commissioners; and whenever any works under this Act would intersect or interfere with any sewer, drain, or watercourse under the control of any such commissioners, the person or company executing the same shall, before any such works be made, construct such proper sewers or works of drainage, and also comply with such orders and regulations, as those commissioners shall require or

Rights of  
Commissioners of  
Sewers  
saved (n).

make to guard against injury to the drainage of the district.

(\*) For Acts relating to Commissioners of Sewers, see Chitty's Statutes, vol. v., p. 1297, *sub tit.* "Sewers."

These Acts (relating to England) are as follows :—

- (1) 23 Hen. 8, c. 5 (Bill of Sewers).
- (2) 7 Anne, c. 10.
- (3) 3 & 4 Will. 4, c. 22.
- (4) 4 & 5 Vict. c. 45.
- (5) 12 & 13 Vict. c. 50.

Works  
connected  
with  
Thames to  
be exe-  
cuted  
under di-  
rection of  
Conserva-  
tors of  
Thames.

**44.** All works executed under the authority of this Act in or connected with the river Thames, or the towing-path thereof, within the jurisdiction of the conservators of the river Thames, shall, in addition to the approval of such works by the Admiralty, so far as hereinbefore made necessary, be executed according to a plan to be approved of by such conservators, and to be deposited at their office; and such works shall be executed and performed to the satisfaction of the engineer for the time being of such conservators; and nothing herein contained shall extend to prejudice or derogate from the estates, rights, interests, liberties, privileges or franchises of the conservators of the river Thames, or to prohibit, defeat, alter or diminish any power, authority or jurisdiction which at the time of the passing of this Act the said conservators did or might lawfully claim, use or exercise (*o*).

(*o*) See the Thames Conservancy Acts, 1857 and 1864 (20 & 21 Vict. c. cxlvii., and 27 & 28 Vict. c. 113); and the Thames Navigation Act, 1866 (29 & 30 Vict. c. 89).

Metropoli-  
tan Board  
of Works,

**45.** Where any of the intended works to be done under or by virtue of this Act shall or may



pass over, under, or by the side of, or so as prejudicially to interfere with, any sewer, drain, watercourse, defence or work under the jurisdiction or control of the Metropolitan Board of Works, or of any vestry or district board constituted under the Metropolis Local Management Act, 1855, or any sewers or works to be made or executed by any such board or vestry, or shall or may in any way prejudicially affect the sewerage or drainage of the districts under the control of any such board or vestry, the person or company executing such works shall not commence the same until he or they shall have given to the said metropolitan or district board or vestry, as the case may be, fourteen days' previous notice in writing of his or their intention to commence them, by leaving such notice at the principal office of such board or vestry, as the case may be, for the time being, with a plan and section showing the course and inclination of the intended works, and other necessary particulars relating thereto, and until such board or vestry respectively shall have signified their approval of the same, unless such board or vestry, as the case may be, do not signify their approval, disapproval or other directions within fourteen days after service of the said plan, sections and particulars as aforesaid; and such person or company shall comply with and conform to all directions and regulations of the respective board or vestry in the execution of the said works, and shall provide any new, altered or substituted works in such manner as such board or vestry may deem necessary for the proper protec-

&c. protected (p).

tion of the sewers and works hereinbefore referred to, and for preventing injury or impediment thereto by or by reason of the said intended works, or any part thereof, and shall save harmless the said metropolitan or district board or vestry respectively against all and every expense to be occasioned thereby; and all such works as may be so required shall be done by or under the direction, superintendence and control of the engineer or other officer or officers of the said metropolitan or district board or vestry, as the case may be, at the costs, charges and expenses in all respects of the landowner; and when any new, altered or substituted works as aforesaid, or any works of defence connected therewith, shall be completed under the provisions of this Act, the same shall thereafter be as fully and completely under the direction, jurisdiction and control of the said boards and vestry respectively as any sewers or works now are or hereafter may be; and nothing in this Act shall extend to prejudice, diminish, alter or take away any of the rights, powers or authorities vested or to be vested in the said boards and vestries, or any of them, or their successors, but all such rights, powers and authorities shall be as valid and effectual as if this Act had not been passed.

(p) As to the constitution of vestries, &c., see the Metropolitan Local Management Act, 1855 (18 & 19 Vict. c. 120), ss. 1—30; and as to the Metropolitan Board of Works, see sect. 43 of the same Act.

Water  
companies  
and com-

**46.** Nothing in this Act contained shall authorize any person to take, otherwise than by

agreement, any land of any waterworks company or waterworks commissioners, or to alter or interfere with any works or property of any such company or commissioners, without their previous consent in writing, or to authorize any person to foul or otherwise injuriously interfere with or affect any stream or supply of water which any waterworks company or waterworks commissioners are authorized to use for the purposes of their undertaking.

commissioners  
protected  
(2).

(q) As to the constitution and rights of waterworks companies, &c., see the Waterworks Clauses Consolidation Act, 1845 (10 Vict. c. 17), and the Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93).

**47.** All works executed under the authority of this Act in or connected with any river, canal, or inland navigation, or the banks or towing-paths or works thereof, vested in or under the jurisdiction or management of any corporation, conservators, trustees, commissioners, undertakers, or individuals, or in respect of the navigation whereon or the use whereof any such corporation, conservators, trustees, commissioners, undertakers, or individuals are entitled by virtue of any Act of Parliament to the receipt of any tolls or other dues, shall be executed according to a plan to be approved by such corporation, conservators, trustees, commissioners, undertakers, or individuals, and to be deposited at their office, and such works shall be executed, maintained, and performed to the reasonable satisfaction of the engineer for the time being of such corporation, conservators, trustees, commissioners, undertakers, or indivi-

Rivers,  
canals, &c.  
protected.

duals; and nothing in this Act contained shall prejudice or derogate from the estates, powers, rights, interests, liberties, privileges, or franchises of such corporation, conservators, trustees, commissioners, undertakers, or individuals, or prohibit, defeat, alter, or diminish any right, power, authority, or jurisdiction which, at the time of the passing of this Act, such corporation, conservators, trustees, commissioners, undertakers, or individuals did or might lawfully claim, use, or exercise.

Commissioners may inspect works.

**48.** The commissioners shall, if and as they see occasion, cause any improvements in progress under this Act to be inspected by a commissioner or assistant commissioner, or an engineer or surveyor, to ascertain the due execution thereof.

And with regard to charges for improvements under this Act, be it enacted as follows:—

Commissioners to execute charge on completion of works, or of some part thereof.

**49.** When the commissioners are satisfied that the improvements sanctioned by them, or some part thereof, have been properly executed, either according to the specifications and plans or drawings approved of by them, or with such deviations therefrom as in their judgment will not diminish the permanent benefit accruing from such improvements to the lands wherein they have been made, they shall execute a charge under their hands and seal upon the inheritance or fee of the lands comprised in the provisional or other sanctioning order, or some sufficient part thereof, for the sum by the same order expressed to be chargeable in respect of such improvements, if all the said im-

provements have been completed, or for a proportional part of such sum if a part only of the said improvements has been executed, together, in either case, with the interest by the same order expressed, and with the amount (if any) which shall have been paid in respect of the purchase of adjoining lands, or of any easement, authority, or right in, through, over, or affecting adjoining lands, with interest thereon at the like rate.

**50.** If the landowner is desirous that the inheritance or fee of the lands improved should be charged with the expenses of and incident to his application to the commissioners, or his contract with any company or person relating to the execution of the improvements, or to the advance of money for their execution, the commissioners may ascertain the amount of the costs, charges, and expenses properly incurred preparatory or in relation to and consequent on such contract, and the application to the commissioners or either of them, and may include in the principal money charged on the inheritance or fee of such lands the amount of such costs, charges, and expenses, and of the settled or taxed costs, if any, which a court or judge shall have ordered as aforesaid to be deemed and taken to be part of the expenses of and incident to the application for improvements, or such part thereof as the commissioners think fit; and the commissioners may also include in such principal money interest at a rate not exceeding five pounds per centum per annum on all payments forming part of the same principal money from

Expenses of application and certain contracts may be included in charge.

the respective dates of such payments to that of the absolute order, but so that no interest shall be allowed on any such payment for more than six years; provided that the total amount of the principal money to be charged on the lands improved under the provisions of this Act shall not in any case exceed that to which, in the opinion of the commissioners, the inheritance or fee of the lands improved will be durably benefited by the improvements.

The charges to be by way of rent-charge created by absolute order;

**51.** Every charge under this Act shall be created by way of rentcharge, payable half-yearly, extending over the term of years fixed by the provisional or other sanctioning order, and the first payment thereof to be made six months after the time when the works in respect of which the same was granted were executed to the satisfaction of the commissioners; and the payment for each half year shall be, and be expressed to be, as to part thereof a repayment of a certain amount of principal money, and as to the remainder thereof a payment of interest; and the charge shall be duly stamped for denoting payment of the proper ad valorem stamp duty which would be payable on a mortgage for securing the like amount as the principal money thereby charged, and shall be called an absolute order; and a copy of every such absolute order shall be authenticated by the seal of the commissioners, and shall be kept by them; and such copy, and any copy thereof authenticated by their seal, shall be evidence of the contents and purport of the same absolute order.

**52.** Charges under this Act shall be made according to the form in the Schedule (B.) hereto annexed, or as near thereto as the circumstances of the case will admit (*r*).

and may be made according to form in Sched. (B.)

(*r*) See *post*, p. 183.

**53.** Whenever, by assignment, under the twenty-sixth section hereof or otherwise, a company having power to execute or advance money for the improvement of land shall become entitled to the creation of any charge under either the forty-ninth or the seventy-eighth section hereof, the commissioners shall, if required, but subject to the provisions herein-before contained, create such charge in the form of, and so that it may also operate as, an absolute or other corresponding order under the Act or Acts applying to such company.

Expenditure made under this Act may be charged under Acts of improvement companies.

**54.** Any company authorized by Act of Parliament to execute or advance money for the improvement of land, by giving notice to the commissioners of their intention to avail themselves of any of the powers given by this Act, shall be held to have adopted the same, and thenceforth all the procedure of such company shall be carried on under and in accordance with this Act only; and any such company which shall adopt this Act as herein-before provided may, with the sanction of three-fourths of the shareholders present at an extraordinary meeting of the company specially convened for the purpose, execute or advance money for the execution of any improvement authorized by this Act in any part of the United

Improvement companies may exercise the powers of this Act, on conforming to its procedure.

As also companies authorized to execute improvements in the United Kingdom.

Kingdom, although not so authorized by any Act or Acts relating to the company.

Absolute order to be conclusive evidence of charge.

**55.** The execution of the absolute order by the commissioners shall be conclusive evidence in all Courts, and for all purposes, of the validity of the charge thereby expressed to be made, and no inquiry shall be permitted either into the title or estate of the landowner, or into the due performance of anything required to be done by this Act, or as to any other matter on which the validity of such charge might but for this enactment have depended.

Registry of rent-charges in Ireland, Middlesex, Yorkshire, and Scotland.

**56.** A memorial of every absolute order of the commissioners whereby a rentcharge is created on land in England and Wales, in pursuance of this Act, shall be registered at the office of the land registry in England, and a memorial of every absolute order of the commissioners whereby a rentcharge is created on land in Ireland, in pursuance of this Act, shall be entered in the proper office for the registration of deeds and wills, and such memorials respectively shall express and contain the date of the order, the name and address of the landowner, the particulars of the lands charged, the amount of the rentcharge, and the period during which the same shall be made payable; and the production of the absolute order, sealed with the seal of the commissioners, shall be a sufficient authority to the registrar for the entry of such memorial at the proper registry office; and all grants of rentcharges on lands in Scotland shall be registered in the general or particular register



of Sasines: provided that every rentcharge to which the present clause applies shall have priority as hereinafter declared, any law or usage to the contrary notwithstanding.

57. Whenever by or under the provisions of any Act of Parliament, royal charter, or commission under the great seal or the seal of the duchy of Lancaster, any public or general works of drainage or other improvements shall be required or authorized to be executed, and the cost thereof shall be directed or authorized to be assessed or charged upon the inheritance of the lands improved, then any landowner who shall, under such Act, charter, or commission have been assessed, and shall have become liable to pay any sum of money so chargeable for or towards such works and improvements, or any of them, in respect of his land, may apply to the commissioners to sanction the money so assessed being charged upon the land in respect of which such landowner shall have been so assessed; and if the commissioners shall be satisfied that the works or improvements have been executed in accordance with the requirement or authority in such Act, charter, or commission contained, they may, after the money shall have been duly paid by such landowner, by an absolute order within the meaning of the fifty-first section hereof, charge upon the inheritance or fee of the land in respect of which such landowner shall have been so assessed the amount so assessed and paid, or such part of it as the commissioners may be willing to sanction, to be repaid with interest.

Landowner may borrow the amount of certain public assessments, and charge same on inheritance;

in form specified, together with costs of application.

**58.** Such absolute order and charge may be made in any form and for any term permitted by this Act, and all the provisions hereof shall apply thereto, in the same manner and with the same effect and operation in all respects as if such order and charge had been made in respect of improvements upon the said land executed under the powers of this Act; and if the landowner is desirous that the inheritance or fee of the said land should be charged with the costs, charges, and expenses of and incident to the said application and order, or any contract connected therewith, the provisions of the fiftieth section hereof shall extend and apply to the present case in the same manner as to the costs, charges, and expenses of the application and contracts in the said fiftieth section mentioned.

Grantee to have charge for principal money from time to time unrepaid, with priority over other incumbrances.

**59.** From the date of the absolute order, the grantee thereof, and his executors, administrators, successors, and assigns, shall have a charge on the lands therein comprised for the principal money from time to time remaining undischarged, by payment of the rentcharge, with interest, at the rates in the several cases hereinbefore respectively expressed, and such charge shall have priority over every other then existing and future charge and incumbrance affecting such lands or estates and interests respectively, whether created under the powers of any Act of Parliament or otherwise, except quit rent, crown rents, chief rents, feu duties, ground annuals, and other charges incident to tenure, tithe commutation rent charges

and teinds, charges created or to be created under any Act authorizing advances of public money for the improvement of land, and any charges created under this Act or charges of prior date created under any other existing Act of Parliament authorizing the charging of lands with the expense of and incident to their improvement: Provided that in case a part only of the land charged is subject to a mortgage or other incumbrance, the charge created under the authority of this Act shall have priority over the mortgage or other incumbrance only to the extent of a due proportion of such charge, when and so soon as the same shall be ascertained under and pursuant to the sixty-sixth section of this Act.

**60.** Every charge under this Act shall, as regards the holder thereof, be deemed to be personal property, except that any holder of such a charge, who shall desire to extinguish the same by reuniting it to the land charged, shall have power for that purpose to direct by any deed that it shall be reunited to and merge in the beneficial interest in the said land, as if it were of the same nature and tenure therewith; but all trustees, directors, and other persons who may be directed or authorized to invest any money on real security shall (unless the contrary be provided by the instrument directing or authorizing such investment) have power, at their discretion, to invest money in such charges, or on mortgages thereof.

Charges to be personal property, but money authorized to be invested on real security may be invested therein, or on mortgages thereof.

**61.** No charge on land made by any absolute order by virtue of this Act shall be deemed such

Charges not to preclude trus-

tees from  
investing  
in purchase  
or on  
mortgage  
of lands.

an incumbrance as shall preclude a trustee of money, with power to invest the same in the purchase of land or on mortgage, from investing it in a purchase or upon a mortgage of the land so charged, unless the terms of his trust or power expressly provide that the land to be so purchased or taken in mortgage be not subject to any prior charge.

**62.** [This section relates exclusively to entailed estates in Scotland.]

Rent-  
charges to  
be recover-  
able as  
tithe rent-  
charges or  
feu duties.

**63.** Every rentcharge on land by virtue of this Act may be recovered by the person or company for the time being entitled to the same, as to lands in England or Ireland, by the same means, and with the like powers, and in like manner in all respects as a rent-charge in lieu of tithes would be recoverable if charged on the same land under the Act of the seventh year of King William the Fourth for the commutation of tithes in England and Wales, or under the Act of the first and second years of the reign of her present Majesty to abolish compositions for tithes in Ireland and to substitute rentcharges in lieu thereof, and the several Acts passed for amending the same, as the case may be, and as if such rentcharge by virtue of this Act were a rentcharge in lieu of tithes made payable to such person or company under the said Acts respectively, and as to lands in Scotland by the same means and in the like manner in all respects as any feu duties or rent or annual rent or other payment out of the same lands would be recoverable.

**64.** If any rentcharge payable under this Act shall be in arrear, such arrear shall not bear interest for a longer period than six months, but interest at five pounds per centum per annum in respect of the same, for any period not exceeding six months, may be recovered in the same manner as the sum in arrear: Provided that if, at the expiration of six months from the time of any payment falling into arrear, there shall not be upon the land charged a sufficient distress to answer and satisfy the said payment and interest thereon for the said period of six months, together with the costs and charges of such distress, then the arrears of such payment shall continue to bear interest at the rate of five pounds per centum per annum until payment or satisfaction thereof, and such interest may be recovered in the same manner as the sum in arrear.

Interest on  
arrears of  
rent-  
charges.

**65.** The grantee or other person for the time being entitled to any rentcharge created under this Act may assign the same by deed duly stamped, and wherein the consideration is truly stated; and such assignment may be according to the form in Schedule (C.) to this Act annexed, or to the like effect; and all assignments made in such form, or as near thereto as the circumstances of the case will admit, shall be effectual to vest, both at law and in equity, the charge thereby assigned, and all the powers, authorities, rights and remedies of the assignor with reference to such charge, in the assignee, his successors, executors, administrators and assigns respectively,

Assign-  
ment of  
charges.

and notice of such assignment shall be sent to the commissioners at their office in London.

Tenants  
for-life to  
keep down  
rent-  
charges.

**66.** Every landowner on whose land a charge shall have been made under this Act, and every succeeding tenant for life, tenant in tail, and other person having a limited interest in the land so charged, shall, as between himself and the persons in remainder or reversion, be bound to pay the yearly or other periodical payments of such charge which shall become payable during the continuance of his interest; and in case he be in the actual occupation or entitled to an apportioned part of the rents and profits of such land up to the time of the termination of his interest, he shall also be bound to pay an apportioned part of the yearly rent or other periodical payment of such charge which shall become due next after the termination of his interest, proportional to the time which elapsed between the day for the previous payment and the day of such termination: provided that no person becoming entitled in possession to any estate or interest in the land shall be liable, as between himself and the persons entitled to the rentcharge, to pay any arrears of the charge remaining unpaid at the time of his becoming so entitled in possession beyond the amount of two years' payment of such charge: Provided also, that the amount paid by any person in respect of such arrears, and any costs occasioned by non-payment thereof, shall be a debt from the person who in the first instance ought to have paid the

same, or from his estate, to the person who paid the same, and shall be recoverable accordingly.

**67.** If any tenant or occupier at a rent join in the application for an improvement, or by writing under his hand, signify to the commissioners, or to an assistant commissioner or engineer, his consent to become charged with the charge, or an apportioned part thereof as hereinafter mentioned, such tenant or occupier shall during his tenancy or occupation be liable to pay the charge, or an apportioned part thereof as hereinafter mentioned; and in case the charge be made in respect of the improvement, as well of other land as of the land included in such tenancy or occupation, the commissioners may, upon such consent of the tenant or occupier, declare in the absolute order what portion of the whole charge payable in respect of the improvement shall be payable by such tenant or occupier during his tenancy or occupancy in respect of the probable improvement of the land included in his tenancy or occupation; but, except as aforesaid, every tenant or occupier who pays such charge shall be entitled to deduct the amount thereof from the rent payable by him to the landowner, and shall be allowed the same in account with him.

Tenant may deduct rent-charge, unless he has agreed to pay it.

**68.** If at any time land charged under this Act, or under any other Act authorizing the creation of charges by the commissioners, is occupied in separate farms or other holdings, or has become the property of separate owners, or the owner thereof

Rent-charges may be apportioned, or part of the land charged released therefrom.

is entitled thereto under separate titles or for distinct and separate interests, or is desirous to sell or dispose of part of such land, or part only of such land is subject to any mortgage or other incumbrance, or for any other reason it would be desirable that the charge should be apportioned or a part of the land charged released therefrom, the commissioners may, with the consent of the landowner, or if the land has become the property of separate owners, or a part thereof is subject to any mortgage or incumbrance, then upon the application of any one of such owners, or of such mortgagee or incumbrancer, but in every case with due notice to the grantee or assignee of the charge, or the husband, guardian, tutor, curator, committee, or trustee, of such grantee or assignee, if a married woman, infant, lunatic, idiot, or furious or fatuous person, and to such other parties (if any) as the commissioners think right, either release from such charge any part of the land charged therewith, or apportion such charge so that a separate and distinct charge may become charged on each separate farm or holding, or on the land of each landowner, or on the land held under each separate title or for each distinct and separate interest, or on the part or each part which the landowner is desirous to sell or dispose of and the part intended to be retained by him, or on the part subject to such mortgage or other incumbrance and on the residue, or on any other separate parts of the land, but so that no charge charged under such apportionment shall be less than twenty shillings for each half-yearly payment:



provided that no lands shall, in consequence of any such apportionment or release, become charged with any greater amount than that to which, in the opinion of the commissioners, they have been durably benefited by the improvements in respect of which such charge was created.

**69.** Every such apportionment or release shall be made by an order under the hands and seal of the commissioners, and shall be in the form set out in Schedule (D.) or (E.) to this Act (*s*), as the case may be, or as near thereto as circumstances will permit, and as to lands in England and Wales, or in Ireland or Scotland, shall be registered in the manner mentioned in the fifty-fourth section hereof, or as near thereto as circumstances will permit; and a copy of every such order shall be authenticated by the seal of the commissioners, and shall be kept by them; and such copy, or any copy thereof authenticated by their seal, shall be conclusive evidence in all courts and for all purposes of the contents and purport of the same order, and of the validity of the apportionment or release thereby expressed to be made; and such order shall take effect from the date thereof, subject to the continuance of all rights and remedies for the recovery of monies which before the date thereof may have become payable out of any lands under the charge so apportioned or released.

Form, registry, and effect of orders of apportionment and release.

(*s*) See *post*, pp. 185—187.

**70.** Every charge apportioned or released as aforesaid shall be recoverable out of the lands on

Charges apportioned, or

from which part of the lands have been released to be deemed original charges.

which the same is charged by the order of apportionment, or which shall not by the order of release be released therefrom, in the same manner as if the same had been originally charged on such lands respectively, and shall, for all the purposes of this Act, or of the Act under which the original charge was created, be deemed to be an original charge on such lands by absolute order.

Several charges may be dealt with in one order of apportionment or release.

**71.** Where any lands are charged by more than one absolute order, any order of apportionment or release under the preceding sections hereof may comprise all or any number of the rentcharges existing by virtue of such absolute orders.

And with regard to the upholding improvements under this Act, be it enacted as follows:

Improvements to be upheld, and condition thereof certified if required.

**72.** So long as any land shall continue charged with any charge hereunder, the person for the time being bound to make the periodical payments of such charge shall uphold the improvements and works in respect of which such charge is made, and shall keep clear and open the outfalls and watercourses of all the drains (if any), and shall, if required either by the commissioners or by any person who shall for the time being be interested in such charge under any assignment or mortgage thereof, once in every year certify to the commissioners the state of such improvements and works, and of such outfalls and watercourses (if any); and if such person shall not so keep and uphold such improvements and works, and such outfalls and watercourses (if any), or shall fell, or cause or

knowingly permit to be felled, except in proper thinning, any trees (*t*) planted under the authority of this Act as an improvement, he shall be liable to an action on the case, in the nature of an action of waste, for the damage thereby occasioned, at the suit of any person entitled to any estate in remainder or reversion in such lands (*u*).

(*t*) A similar provision as to trees planted as improvements is contained in the Settled Land Act, 1882, s. 28, sub-s. 2, *ante*, p. 66.

(*u*) As to waste, see Settled Land Act, 1882, s. 29, *ante*, p. 68, note (*r*).

**73.** Every person for the time being bound to make the periodical payments of any charge may from time to time, by himself, his engineers, surveyors, agents, servants, and workmen, enter upon any lands in, through, or upon which any of the works have been executed, to ascertain the condition of the works, and to maintain and repair the same, nevertheless paying to the person for the time being enabled by this Act to sell or grant any easement in such lands, in case the parties differ about the same, such compensation as shall be determined by two justices, or the sheriff, as provided by the Lands Clauses Consolidation Act, 1845, or the Lands Clauses Consolidation (Scotland) Act, 1845, for settlement by justices and sheriffs respectively of questions of disputed compensation: provided that as to any lands adjoining or near the land improved, to which the provisions of the Acts of the tenth and eleventh years of the reign of her present Majesty, chapters thirty-eight and one hundred and thirteen, and those of the third part of the Land Drainage Act, 1861,

are hereinbefore respectively made applicable, the powers of entry upon such lands for any of the purposes aforesaid shall be subject to and be regulated by the provisions of those Acts respectively.

Farm-houses, &c. to be insured; power to insure in case of default.

74. When any farmhouses, farm buildings, or works susceptible of damage by fire shall have been erected, improved, or added to under this Act, then, so long as any land shall continue charged under this Act in respect thereof, the person for the time being bound to make the yearly or other periodical payments of such charge shall insure and keep insured against damage by fire all such farmhouses, farm buildings, and works in an amount equal to the principal amount originally secured by such charge at the least; and such person shall once in every year certify to the commissioners the fact of such insurance, and the particulars thereof, and that the premium and duty for such insurance for the year then current have been duly paid; and if such person shall not insure or keep insured such farmhouses, farm buildings, and works, or shall not duly certify the matters aforesaid, it shall be lawful for the person entitled to the charge for the time being, with the assent of the commissioners, to insure against damage by fire the said farmhouses, farm buildings, and works in an amount not exceeding the principal amount originally secured by such charge, and either in the name of the person by whom such default shall have been made, or in the name of the landowner mentioned in the

absolute order, and thereafter to keep the same insured during the continuance of the said charge; and the person for the time being bound to make the periodical payments of such charge shall from time to time, on the day on which the next payment shall become due on the said charge, repay to the person for the time being entitled to the said charge any sums so paid by him for premium and duty on such insurance; and in default of such payment, the amount of such premium and duty, with interest thereon at the rate of five pounds per centum per annum from the time of such default, may be recovered by the last-mentioned person by the same means and in the like manner as if the same had been payable as part of the said charge.

75. If it shall be represented to the commissioners that the person for the time being bound to make periodical payments of any charge created under this or any other existing Act authorizing the advance of money for the improvement of land has neglected to uphold and maintain the improvements in respect of which the charge was executed, or any of them, the commissioners may, upon security being given for such an amount as they may consider necessary to cover any expenses that may be incurred by them, cause an inspection of the works to be made by an assistant commissioner, engineer, or surveyor.

Inclosure  
Commissioners  
may compel main-  
tenance of  
improve-  
ments.

After such inspection, if the commissioners are satisfied that the improvements have not been upheld and maintained, they shall cause notice to

be given to the person bound to make the said periodical payments requiring him to execute the works necessary to uphold and maintain the same within three calendar months from the time of giving such notice.

If such works shall not be executed to the satisfaction of the commissioners within such three months, they may cause such works as in their judgment shall be necessary to uphold and maintain such improvements to be executed by a person appointed by them.

The costs thereof, including the expenses of the assistant commissioner, engineer or surveyor, shall be repaid by the person bound to make the said periodical payments to the person entitled to the charge, on request, and in default thereof the amount so certified may be recovered, with all expenses incidental to the recovery thereof, in the name of the person for the time being entitled to the charge, by the same means and in the like manner as if the same had been payable as part of the said charge.

Inclosure  
Commissioners  
may give  
relief from  
maintenance of  
improvements.

**76.** If it shall be represented to the commissioners that it is not expedient or necessary that any works, for the cost of which there shall be a subsisting charge, or any part of such works, should be upheld or maintained, the commissioners may, on having deposited with them a sum, to be fixed by them, to cover all expenses, cause the said works to be inspected by an assistant commissioner, engineer or surveyor.

If after such inspection and notice to the parties

who were served with notice of the application to charge the land or their representatives, and such other persons, if any, as the commissioners may direct, the commissioners shall find and certify that it is not expedient or necessary that the works, or any of them, should be upheld or maintained, thereupon the person for the time being bound to make the said periodical payment shall be relieved from all liability in respect of the maintenance of the works referred to in the commissioners' certificate.

77. If any embankment or work constructed under the powers of this Act in, under, over, through or across any tidal water or navigable river, or if any portion of any embankment or work which affects or may affect any such water or river, or the access thereto, shall be abandoned, or suffered to fall into disuse or decay, it shall be lawful for the Admiralty or the Board of Trade, as the case may require, to abate and remove the same, or such part or parts thereof as he or they may at any time or times deem fit and proper, and to restore the site thereof to its former condition, at the cost and charge of the landowner, the amount of which cost and charge shall be a debt due from the landowner to the crown, and be recovered accordingly, with costs of suit.

Admiralty  
may re-  
move  
works  
abandoned  
or fallen  
into decay.

And with regard to charging lands with money subscribed for the construction of railways, be it enacted as follows :

78. In case any landowner shall be desirous of

Conditions  
for appli-

cation to  
commis-  
sioners.

subscribing for any shares or stock in the capital, whether original or additional, of a company having power to construct a railway or navigable canal, or any branch or extension railway or navigable canal, or any deviation of a line of railway or a navigable canal already sanctioned, the works for which such subscription is to be made being unfinished, or in any additional capital to be raised for the completion of any such railway, canal, branch, extension, or deviation, the same being upon or near to and which will improve or benefit the lands of such landowner, and who shall be desirous that such amount, or any part thereof, may be charged upon the lands so to be improved, it shall be lawful for him to apply to the commissioners for that purpose within the time limited by the railway or canal company's Act or Acts for the construction of the works in question.

Commis-  
sioners'  
proceed-  
ings on ap-  
plication.

**79.** If the commissioners shall think fit to entertain such application, they shall cause all such inquiries to be made, and take all such other steps, as shall seem to them expedient for obtaining information as to the circumstances; and all the provisions of the thirteenth, fourteenth, fifteenth, seventeenth, eighteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fifth, and fifty-first sections of this Act shall apply to the case as though an improvement were to be made of the lands proposed to be charged.

Provi-  
sional  
order sanc-  
tioning  
charge.

**80.** If the commissioners shall be satisfied that the railway or canal, when constructed and open for traffic, will effect a permanent increase of the



yearly value of the lands exceeding the yearly amount proposed to be charged thereon, they shall execute and deliver to the landowner a provisional order, under their seal and the hands of two of them, expressing their sanction of the charge proposed; and such order shall be made as near to the form set forth in the Schedule (A.) to this Act (x) as the circumstances will permit, and shall, with the right to a charge thereby created, be assignable by endorsement, either absolutely or by way of security, to any company or person that may agree to advance, by paying the same to the railway or canal company, the amount authorized to be charged, and notice of such assignment shall be given to the commissioners, and shall be registered by them.

(x) See *post*, p. 183.

**81.** Every company empowered by Act of Parliament to lend money for the improvement of land is hereby empowered to advance, by paying the same to the railway or canal company, any money authorized to be charged in manner aforesaid.

Companies  
empowered  
to lend.

**82.** When the railway or canal shall have been completed and opened throughout for public traffic, and as many shares in the capital of the railway or canal company subscribed for or held as aforesaid by the landowner as shall be equal in nominal amount to the money authorized to be charged shall have been fully paid up, and the certificates for such shares shall have been deposited by the

Commissioners'  
absolute  
order and  
its condi-  
tions.

landowner with the commissioners, the commissioners shall, by an absolute order under their hands and seal, execute to the landowner or his assignees a charge upon the inheritance or fee of the lands in question of the amount authorized as aforesaid to be charged, and may, if the landowner shall so desire, include, with the principal money so charged, the costs, charges, and expenses of the application and orders, and of any advance which may have been made to him of the amount authorized to be charged, and such settled or taxed costs and interest as mentioned in the fiftieth section hereof, subject nevertheless to the proviso in the same section contained.

Form and effect of absolute order.

**83.** Such absolute order shall be made in the form in the Schedule (B.) to this Act annexed (*y*), or as near thereto as the circumstances will permit, and all the provisions of this Act relating to absolute orders, whether in respect of the form or effect of such charges or orders or otherwise, except only the provisions for the apportionment and release of such charges, shall apply to absolute orders under the last preceding section as far as the circumstances admit.

(*y*) See *post*, p. 183.

Notice thereof to be entered in register of shareholders.

**84.** The landowner shall forthwith give notice to the railway or canal company of the execution of such absolute order, and of the deposit of such certificates with the commissioners, and thereupon the company shall make an entry or memorial in their register of shareholders with respect to such shares of the fact of such absolute order having been executed.

**85.** From the time of such notice, and during the whole term of the charge created by such absolute order, the person who for the time being shall be bound to make the periodical payments of such charge shall be entitled to the said shares, and if the same shall not at the time being be registered in his name, the person registered as the holder thereof shall, as between himself and the person so entitled, hold them in trust for such last-mentioned person.

Person  
liable to  
pay charge  
to be en-  
titled for  
the time  
being to  
the shares,

**86.** The person so for the time being entitled may at any time require the person registered as the holder of the said shares, or his representatives, to transfer to him the said shares, and such transfer shall thereupon be made accordingly, but at the expense in all respects of the transferee; and upon the production of such transfer duly stamped, and of a certificate by the commissioners under their hands and seal that the transferee is the person at the time being bound to make the periodical payments of the said charge, the railway or canal company shall register such transfer.

and to  
have them  
stand in his  
own name.

**87.** With the exception of such transfers as may from time to time be made for the purpose of transferring the shares to the person so for the time being entitled thereto, the said shares shall not under any circumstances be transferred or disposed of by the registered holder, whether he be the person for the time being entitled thereto or not, during the term of the said charge; but during the term of such charge the registered

holder for the time being of the said shares shall have all the other rights and powers of a shareholder in the railway or canal company in respect of the said shares; and the railway or canal company shall not be bound to see to the application of any dividend received by such registered holder, but as between himself and the person or persons for the time being entitled to such shares he shall hold any dividend which may be received by him in trust for the person who, at the time when such dividend became payable, was the person entitled to the said shares.

Entire shares to belong to parties in proportion to their payments and to be re-leased to them from time to time.

**88.** Whenever any person or those whom he legally represents as their executor or administrator shall have been bound to make, and shall have made, such and so many periodical payments of the charge as to repay thereby principal money which, in proportion to the whole amount of principal money charged and the whole number of the said shares, shall correspond to any integral number of shares, with or without a fraction over, it shall be lawful for the commissioners, on the application of such person, made either during the term of the charge or within two years after its expiration, to certify that fact under their hands and seal, and by the same certificate to appropriate to such person certain specified shares to such integral number, and to deliver to him the corresponding share certificates; and upon the production to the railway or canal company of such certificate by the commissioners and share certificates, it shall be lawful for such person, if

he shall not already be the registered holder, to require such shares to be transferred to him, and the railway or canal company shall make an entry or memorial on their register of shareholders of such shares being freed from the provisions of this Act, or of the term of the charge having expired, as the case may be, and such shares shall thenceforward be held and transferred in the same manner as any other shares in the same company, but if the term of the charge shall not have expired the three last preceding sections of this Act shall still apply to the residue of the shares to which the same charge shall relate.

**89.** The shares composing the said residue shall at the end of two years after the expiration of the term of the charge belong to the person who shall have been bound to make the last periodical payment of the charge, or to his executors or administrators, on such payment being made; and the commissioners shall deliver to him or them the corresponding share certificates, and certify the title to the shares under their hands and seal in accordance with the above provision; and upon the production to the railway or canal company of the share certificates and such certificate by the commissioners, such person as aforesaid, or his executors or administrators, shall have the said shares transferred to him or them, so far as he or they shall not be already the registered holder or holders thereof; and the railway or canal company shall make an entry or memorial on their register of shareholders of the term of the

Shares not claimed within two years from expiration of term to belong to person bound to make last payment of charge.

charge having expired, and thenceforward the said shares shall be held and transferred in the same manner as any other shares in the same company.

**90, 91.** [*Fees.* Repealed by Inclosure Expenses Act, 1868] (z).

Commissioners to prepare a table of fees.

(z) By the Inclosure Expenses Act, 1868 (31 & 32 Vict. c. 89), s. 6, it is enacted, that "The commissioners shall, as soon as conveniently may be after the passing of this Act, prepare a table or tables of fees to be taken in respect of the business transacted under the Acts administered by them, and such table of fees shall be subject to the approval of the Lords Commissioners of her Majesty's Treasury; and the commissioners may, with the like approval, from time to time alter, amend, add to or reduce such fees, or any of them; and every such table of fees, and every such alteration, amendment, addition or reduction into or of the same, shall be published in the London Gazette, and shall be laid before Parliament; and all fees payable in accordance with such table or tables shall be received by stamps denoting the amount of fee payable, and not in money.

"When any fee is payable in respect of any document, a stamp denoting the amount of fee shall be affixed to or impressed upon such document.

"The Commissioners of Inland Revenue shall provide everything that is necessary for the collection of the monies hereby directed to be paid by stamps, and shall keep a separate account of such stamps; and the provisions in the several Acts for the time being in force relating to stamps under the care or management of the Commissioners of Inland Revenue shall apply to the stamps to be provided in pursuance of this Act, and to any document on which such stamps may be affixed or impressed, and be applied and put into execution for collecting and securing the sums of money denoted thereby, and for detecting, preventing and punishing all frauds, forgeries and other offences relating thereto, as fully and effectually, to all intents and purposes, as if such provisions had been herein repeated and specially enacted with reference to such last-mentioned stamps.

"The provisions herein enacted relating to fees shall be applicable to and take the place of the enactments relating to fees contained in the nineteenth and following section of the Improvement of Land Act, 1864."

## SCHEDULES to which the foregoing Act refers.

## SCHEDULE (A.)

*Provisional Order.**(Proper Heading.)*

The Inclosure Commissioners for England and Wales, in pursuance of "The Improvement of Land Act, 1864," do, by this order under their hands and seal, sanction the proposed improvements expressed upon the terms and conditions that such improvements be executed in the manner mentioned or specified in the said contract, and at an expense not exceeding the sum of , and do hereby declare and provisionally order that it is right and proper, and for the benefit of the parties interested in the lands mentioned in the schedule hereto, that the inheritance or fee of such lands should be charged with the said sum of together with the costs, charges, and expenses preparatory or in relation to and consequent on the said contract and the application for this order, and that the same should, to the whole amount of such respective monies, [or should, to any amount not exceeding as the case may be,] be charged in the manner following; (that is to say,) [*here express how the amount is to be repaid, with interest.*]

In witness whereof they have hereunto affixed their hands and seal, this day of , in the year of our Lord one thousand eight hundred and .

## SCHEDULE of Lands provisionally charged.

Name, &c. of Lands.	Land- owner.	Occupier.	Parish.	County.	Total Acreage.	Total Rental.

## SCHEDULE (B.)

## The Improvement of Land Act, 1864.

County of .  
Parish of .  
No.

*Absolute Order.*

[*Here insert name of landowner*] of [*here insert address.*]

Loan of pounds for the improvement of , in the parish of , in the county of .

The Inclosure Commissioners for England and Wales, in pursuance of "The Improvement of Land Act, 1864," do, by

## THE IMPROVEMENT OF LAND ACT, 1864.

this absolute order under their hands and seal, charge the inheritance or fee of the lands mentioned in the schedule hereto with the payment to                      of the yearly sum of                      pounds                      shillings and                      pence, payable half-yearly on the                      day of                      and the                      day of                      in every year, for the term of                      years, and being a proportionate repayment, according to the table annexed, of the capital sum of                      pounds, with interest at                      per cent. per annum, the first half-yearly payment to be made on the                      day of                      .  
Dated this                      day of                      , 18                      .

## SCHEDULE of Lands charged.

Name, &c. of Lands.	Land- owner.	Occupier.	Parish.	County.	Total Acreage.

TABLE.

Half-yearly Payments.	Proportionate Repayments of the Loan.	Interest at £                      per Cent. per Annum.

## SCHEDULE (C.)

*Assignment of a Charge.*

(*Proper Heading.*)

I, A. B., &c., in pursuance of "The Improvement of Land Act, 1864," hereby, in consideration of [*state the consideration*], assign to C. D. of &c., his executors, administrators, and assigns, the charge of the sum of £                      and interest at the rate of, &c. [*or the charge of, &c., as the case may be*], which by virtue of the Absolute Order, No. [                      ], executed by the Inclosure Commissioners for England and Wales, and dated, &c., is an absolute charge on the inheritance of the lands mentioned in the schedule hereto, and all the powers, authorities, rights,



and remedies of                      with reference to such charge. [*Here add such clauses and provisions, if any, as are agreed on between the parties.*]

As witness, &c., this                      day of                      .  
(L.S.)

SCHEDULE of the Lands charged.

Name, &c. of Lands.	Landowner.	Occupier.	Parish.	County.

SCHEDULE (D.)

*Form of Order for apportioning Charges.*

The Improvement of Land Act, 1864.

County of                      , Parish of                      .

Whereas, by an Absolute Order under this Act, dated the                      day of                      and numbered                      the lands mentioned in the first and second schedules hereto were charged with the payment to                      of the yearly sum of                      payable half-yearly for the term of                      years:

And whereas, upon application made to them, the Inclosure Commissioners for England and Wales see fit to apportion the said charge:

Now therefore the said Inclosure Commissioners, in pursuance of "The Improvement of Land Act, 1864," do, by this order under their hands and seal, charge the inheritance or fee of the lands mentioned in the first schedule hereto with the payment to                      of the yearly sum of                      pounds shillings and                      pence, payable half-yearly on the                      day of                      and the                      day of                      in every year, for the term of                      years, being a proportionate repayment, according to the table to the same schedule annexed, of the capital sum                      pounds, with interest at                      per cent. per annum, the first half-yearly payment to be made on the                      day of                      ; and do also charge the inheritance or fee of the lands mentioned in the second schedule hereto with the payment to                      of the yearly sum of                      pounds shillings and                      pence, payable half-yearly on the                      day of                      in every year, for the term of                      years, being a proportionate repayment, according to the table to the same schedule annexed, of the capital sum of                      pounds, with interest at                      per cent. per annum, the first half-yearly payment to be made on the                      day of                      ; and do further release and exempt the

## THE IMPROVEMENT OF LAND ACT, 1864.

said lands respectively from the respective residues of the said charge created by the above-mentioned absolute order.

Dated this       day of       .

## FIRST SCHEDULE.

Name, &c. of Lands.	Land- owner.	Occupier.	Parish.	County.	Total Acreage.

## TABLE.

Half-yearly Payments.	Proportionate Repayments of the Loan.	Interest at 2       per Cent. per Annum.

## SECOND SCHEDULE.

Name, &c. of Lands.	Land- owner.	Occupier.	Parish.	County.	Total Acreage.

## TABLE.

Half-yearly Payments.	Proportionate Repayment of the Loan.	Interest at 2       per Cent. per Annum.

## SCHEDULE (E.)

*Form of Order for exempting Lands.*

## The Improvement of Land Act, 1864.

County of , Parish of .

Whereas, by an Absolute Order under this Act, dated the day of , and numbered , the lands mentioned in the First and Second Schedules hereto were charged with the payment to of the yearly sum of , payable half-yearly for the term of years :

And whereas, upon application made to them, the Inclosure Commissioners for England and Wales see fit to release and exempt from such charge such of the said lands as are particularized in the First Schedule hereto :

Now therefore the said Inclosure Commissioners, in pursuance of "The Improvement of Land Act, 1864," do, by this order under their hands and seal, release and exempt the said lands mentioned in the First Schedule hereto from the charge created by the above-mentioned Absolute Order, and from all liability thereto, and do hereby declare that the said charge applies to and continues in force as to the lands particularized in the Second Schedule hereto only.

Dated this day of .

## SCHEDULE I. (Lands exempted.)

Name, &c. of Lands.	Land- owner.	Occupier.	Parish.	County.	Total Acreage.

## SCHEDULE II. (Lands still subject to Rentcharge.)

Name, &c. of Lands.	Land- owner.	Occupier.	Parish.	County.	Total Acreage.

## SCHEDULE (F.)

*Vesting Order.*

The Inclosure Commissioners for England and Wales, in pursuance of "The Improvement of Land Act, 1864," do, by this order under their hands and seal, in consideration of £            to them paid by A. B. of           , transfer to and vest in the said A. B., his executors, administrators, and assigns,            shares of and in the            Railway or Canal Company, numbered           , and now registered in the name of C. D.

In witness whereof they have hereunto affixed their hands and seal this            day of           , in the year one thousand eight hundred and           .

## ORDERS, FORMS, &c.

### Issued by the Inclosure Commission under the Improvement of Land Act, 1864.

*FORM indicating the Particulars of the Information to be furnished to the Inclosure Commissioners for England and Wales by Landowners desirous of borrowing or advancing Money under the Improvement of Land Act, 1864.*

Parish or township, or several parishes or townships, or extra-parochial place or places, as the case may be.

If the land is in any district not here properly named, insert the proper description.

State the nearest railway station.

\* Or counties.

The land to which the subjoined application relates is situated in the \_\_\_\_\_ of \_\_\_\_\_, in the county\* of \_\_\_\_\_, and is commonly known as \_\_\_\_\_, and is within \_\_\_\_\_ miles of the \_\_\_\_\_ Railway Station, on the \_\_\_\_\_ Railway.

#### ANSWERS.

I. State the name of applicant in full.....  
Address .....

If a minor, or under any other disability, state the circumstances, and how represented.

II. State the name and address of the applicant's land agent or ground steward† .....

III. State the total acreage of the estate to be improved, and on which the rent-charge will be taken .....

IV. Total rental of the estate on which the rent-charge will be taken .....

V. Total rental (or annual value) of the acreage to be the subject of the proposed improvements .....

N.B.—If the application is entertained by the commissioners, a schedule stating the full particulars of the farm to be charged must be at once

See Improvement of Land Act, 1864, s. 24.

---

† The land agent or ground steward here referred to will be taken to represent the landowner in all matters relating to the execution of the works, unless otherwise expressly declared.

## ANSWERS.

made out and returned to the Inclosure Office.  
It should be in this form:—

SCHEDULE OF LANDS TO BE CHARGED.

Name. &c. of Lands.	Land- owner.	Occu- pier.	Parish.	County.	Total Acre- age.	Total Rental.

Sect. 12.

VI. Is the land to be included in the application the property of one or more landowners? and if of more than one, state what proportion of the whole sum to be expended is to be expended and charged on the estate of each.

Sect. 8.

VII. How is the landowner interested in the land proposed to be improved? Refer to sect. 8 of the Improvement of Land Act, and state which of the descriptions there given applies to the present application.

Sect. 17.

As to service  
of notices,  
see sect. 7.

VIII. Is there any charge or security on the land to be improved? Give the names and addresses of the persons who are entitled to preliminary notices under the 17th section of the Improvement of Land Act, 1864.

N.B.—The section here referred to is as follows:—[*Here follows the section*].

Sects. 18, 21.

IX. Is the landowner or the husband of the landowner the father of the person or persons entitled, either at law or in equity, to any estate in the land to be improved, or any part thereof, in reversion or remainder, up to and inclusive of the person entitled to the first vested estate of inheritance, and if so, are such persons, or any of them, an infant or infants, or a minor or minors?

N.B.—If this should be so, application must be made to the Court of Chancery [*now* Chancery Division] in England, or the Court of Session in Scotland, for an order of Court. A similar order will be necessary in case any person interested shall dissent from the proposed scheme within a month after advertisement.

## ANSWERS.

Sect. 20. X. Is the land held in right of any church, chapel, or other ecclesiastical benefice?

N.B.—If so, the consent of the bishop and patron must be written on this application, authorizing the commissioners to entertain the application.

Sect. 35. XI. Is the Crown interested in any land proposed to be interfered with?

Sect. 36. Or the Commissioners of Works and Public Buildings?

Sect. 37. Or the Duchy of Cornwall?

Sect. 38. Or the Duchy of Lancaster?

Sect. 42. Or the War Department?

Sect. 39. XII. Does any part of the land abut upon the shore of the sea, or of a tidal navigable river? Are any of the proposed works within the jurisdiction of the Admiralty or of the Board of Trade?

XIII. Will any of the proposed improvements interfere with any navigable river or canal, and if so, who are the persons entitled to the notices which are directed by the 19th sect. of the Improvement of Land Act, 1864?

Sect. 44. XIV. Will any of the proposed improvements be executed in connection with the river Thames?

Sect. 45. Or come within the jurisdiction of the Metropolitan Board of Works?

Sect. 43. Or of any Commission of Sewers?

N.B.—In all cases where the four previous questions are answered in the affirmative, the consents required by the sections indicated in the margin must be obtained.

Sect. 9. XV. State the particulars of the proposed improvements. †

1. Drainage of land and the straightening, widening, deepening, or otherwise improving the drains, streams, and watercourses of any land.

Probable maximum cost .....

2. Irrigation and warping of land.

Probable maximum cost .....

3. Embanking and weiring of land from the sea or tidal waters, or from lakes, rivers, or streams, in a permanent manner.

Sea or tidal waters. ....

Lakes .....

Rivers or streams .....

Probable maximum cost .....

† These particulars may, when more convenient, be fully stated in schedules to be referred to here, and annexed to the application.

## ANSWERS.

4. Inclosing of land, and straightening fences, and re-division of fields.  
     Probable maximum cost .....
5. Reclamation of land, including all operations necessary thereto.  
     Probable maximum cost .....
6. The making permanent farm roads or permanent *tramways or railways*, or navigable canals, for purposes connected with the improvement of estate.  
     Roads .....  
     Tramways or railways. ....  
     Navigable canals .....  
     Probable maximum cost .....
7. Clearing of land, (whether wood, copse, or rock, stones, &c., &c.)  
     Wood or copse .....  
     Rock and stones .....  
     Probable maximum cost .....
8. Erection of labourers' cottages, farm houses, and other buildings required for farm purposes, and the improvements of, and additions to, labourers' cottages, farm houses, and other buildings, for farm purposes already erected, such improvements and additions being of a permanent nature.  
     Probable maximum cost .....
9. Planting for shelter.  
     Probable maximum cost .....
10. Constructing or erecting any engine-houses, water wheels, saw and other mills, kilns, shafts, wells, ponds, tanks, reservoirs, dams, leads, pipes, conduits, watercourses, bridges, weirs, sluices, flood-gates, and hatches, which will increase the value of any lands for agricultural purposes.  
     Probable maximum cost .....
11. Construction or improvement of jetties or landing-places on the sea coast, or on the banks of navigable rivers or lakes, for the transport of cattle, sheep, and other agricultural stock and produce, and of lime, manure and other articles and things for agricultural purposes, provided that the Inclosure Commissioners shall be satisfied that such works will add to the permanent value



## ANSWERS.

of the lands to be charged to an extent equal to the expense thereof.

Probable maximum cost.....

12. The execution of all such works as in the judgment of the commissioners may be necessary for carrying into effect any matter hereinbefore mentioned or for deriving the full benefit thereof.

Probable maximum cost.....

XVI. If there be any binding agreement with any tenant or tenants to pay the whole or any part of the rentcharge, state it.

XVII. Are the proposed works to be carried out, or the money raised under the provisions of any improvement company's acts? and if so, state the name of the company.

Sect. 78.

XVIII. State the particulars of proposed subscriptions to the stock of a railway or canal company.

1. Name of the company.
2. Title and date of the private Act, or of the certificate under the "Railway Facilities Construction Act."
3. Date of expiration of time for construction of works.
4. Proposed amount of subscription.
5. Estimated amount of increased value which the railway or canal will confer upon the estate proposed to be charged.

XIX. State the total amount of the outlay required, and the term of years for which it is desired to charge the estate with repayment. (The term cannot in any case exceed twenty-five years.)

State the rate of interest desired to be charged on the amount of the proposed outlay.

I (or we), the undersigned, being a person (or persons) interested as above stated in the land above mentioned, situated in the                      of                     , in the county of                     , submit to the Inclosure Commissioners for England and Wales the information in respect to such land and to the proposed improvements, written as answers to the foregoing questions,

and I (or we) believe such information to be correct: And I (or we) hereby apply to the said commissioners to sanction the proposed improvements, under the Improvement of Land Act, 1864, as set forth in this application and in the schedules thereto appended, and we do hereby undertake to pay all the expenses the commissioners shall incur whenever required by them to do so.

Dated this            day of            , 188 .

(Signed)

We, the undersigned, being parties interested, whose consent is required by law to the above application, do hereby signify our consent.

(Signed)

*To the Inclosure Commissioners  
for England and Wales.*

N.B.—When the form is issued under the Limited Owners' Residences Acts, 1870 and 1871—(i.) The word "nett" is substituted for "total" in clause iv (see 33 & 34 Vict. c. 56, s. 4); (ii.) Clauses v, xii, xiii, xiv, xvi, and xviii are omitted, also the list of improvements appended to clause xv, and instead thereof is appended sect. 8 of the Act of 1870.

### MINUTE OF THE INCLOSURE COMMISSIONERS *with reference to the Erection of Buildings in England under the several Acts for the Improvement of Land.*

1st. Every application for the appointment of an inspector must state the amount proposed to be charged in respect of each of the several contemplated works. Where works of different kinds are included in one application, the amount to be expended on each cannot be varied after the issue of the order of the commissioners sanctioning the works unless upon special application by the landowner.

2nd. The whole\* of the plans, drawn on tracing cloth, should be sent at the same time by the landowner to the commissioners, and must show any existing buildings, as well as those proposed to be erected: existing buildings to be coloured brown, new buildings red, and any *repairs or alterations* intended to be executed by the landowner, blue. The estimated cost of the new works to be given separately from all repairs to existing buildings, and to be marked on each plan, or given in a separate schedule. Full detailed specifications must accompany the plans; repairs and alterations (if any) to be given under a separate heading, and not mixed up with

---

\* Under the "Lands Improvement Company's Acts," the "Land Loan and Enfranchisement Company's Act," and the "Improvement of Land Act, 1864," plans and specifications of the works to be executed within one year of the date of the provisional order only need be forwarded at first, provided that for each successive year the plans and specifications of all works to be done in that year be always delivered in advance.

The plans and specifications are retained under the control of the commissioners. Before transmitting them, therefore, the landowner should take duplicates for working purposes.

the new works. Unless these requirements be complied with, the application cannot be entertained.

3rd. All buildings must be erected in a substantial and durable manner, and no weather-boarded buildings can be sanctioned, except barns under special circumstances. An efficient supply of water must be provided for all buildings, and the source from which it is derived fully described.

4th. To admit of a proper separation of the sexes, three bed-rooms are to be provided in each labourer's cottage; where, however, many are to be built, a proportion with two bed-rooms, for labourers without families, will not be objected to.

The height of the living rooms not to be less than 8 feet in the clear, and the bed-rooms not less than 7 feet 6 inches; the level of the ground floor not to be less than 8 inches above the general surface of the ground outside the buildings.

Party walls between cottages, when built of bricks, not to be less than 9 inches thick, and in all cases to be carried from the foundations to the underside of the roof covering.

5th. The plans and specifications should be sufficiently detailed to enable a contractor to tender for the work, and should consist of the following drawings on a scale of either 4 or 8 feet to an inch, drawn on tracing cloth or tracing paper mounted on linen only:—

1st. Ground plan upon which also the drains should be shown, and the thickness of walls figured.

2nd. Plans of the several floors and roofs.

3rd. Elevations of the several fronts, with at least one or more sections, showing the height of the several rooms or storeys, with the scantlings of the various timbers figured on them.

6th. The commissioners would impress upon landowners the importance of having all plans and specifications forwarded to them as early in the year as possible, and they will make such arrangements that the inspection shall not be unnecessarily delayed; but if applications be deferred until the building season has commenced, much valuable time must necessarily be lost.

7th. As much inconvenience may arise from second applications being made for further works of a similar kind on the same lands prior to the completion of similar works under a previous application, the commissioners will not, except under very special circumstances, sanction such second application until the first is completed.

8th. The commissioners desire to draw particular attention to the provisions in the Acts, which require that the sanction of the commissioners shall be obtained before the works are commenced. No deviation from this can be sanctioned.

9th. The commissioners require to be informed by letter, addressed to their office in London, by the landowner or his agent, when the buildings are in skeleton; and in carrying out the buildings no alterations or deviations of any description must be made from the plans and specifications that have been approved of by the commissioners, unless previously submitted to and sanctioned by them.

The non-compliance with these requisitions may entail upon the landowner the refusal of the commissioners to allow the cost of the works when completed.

*Specifications.*

The specifications being often found defective, attention is called to the following particulars:—

- Excavator.*  
*Foundations.* A minimum depth should be given for the footings of all walls, piers, &c., so that the top course shall not be nearer to the surface of the ground than 6 inches; the depth of all cess-pools, drains, tanks, &c., to be also specified.
- Drains.* The general drainage of the site and buildings to be fully described and all drains to be laid with a good and sufficient fall; those for manure not to be less than 1 foot in 80 feet, and those for water only not less than 1 foot in 100 feet.
- Bricklayer or*  
*Mason.*  
*Footings.* The number and thickness of the courses to be specified, those of stone to be about 1 foot thick in one or two courses; those of bricks in no case to be less than two single courses, and to buildings of more than one storey high, the bottom course to be double.
- Bricks.* The description and quality to be specified, and the following clause inserted in the specification: "Every header to be a whole brick and no half-bricks, or bats used in any portion of the walls, except as closers to a course."
- Brick walls.* In hollow brick walls bonded together by wrought-iron ties, the ties to be 9 inches long,  $1\frac{1}{2}$  inch wide, and  $\frac{1}{8}$  of an inch thick, built in not less than 2 feet apart in every fourth course.
- Stone.* The description and quality of stone for walling, lintels, sills, quoins, and other dressings, should be given, and it should be specified that proper bond stones are to be built into all walls of their full thickness, so that there shall not be more than 5 feet from one bond stone to another, either in the same course or in the courses above or below, or that they shall not be more than 3 feet apart in any direction.
- Lime.* The description and quality of the lime to be specified, together with the proportion of sand.
- Air-bricks.* Cast-iron air bricks to be inserted in all external walls for ventilation under boarded floors.
- Carpenter.*  
*Timber.* In all cases where fir timber is used, that obtained from Memel or Norway, and battens from Dram, St. Petersburg, or other Norway or Baltic ports, is to be preferred.
- All oak used to be of English growth.
- No timber to be placed nearer to the inside of any flue than 1 foot.
- All timbers to be cut die square, and to hold the scantlings specified when finished.

Roofing. Scantlings of Memel or Norway fir, for the timbers of roofs, &c. in the following table, will be sanctioned by the Commissioners, viz.:—

Description of Roof.	ft. $\frac{1}{2}$ $\frac{3}{4}$ $\frac{1}{2}$ $\frac{3}{4}$	Beams.	Principal Rafters.	King Post.	Queen Posts.	Struts.	Straining Piece.	Sill Piece.	Purlins.	Common Rafters.	Wall Plates.	Pole Plates.
King post	18	in. $7\frac{1}{2}$ $\times$ 3	in. $5\frac{1}{2}$ $\times$ 3	in. $4\frac{1}{2}$ $\times$ 3		in. $3\frac{1}{2}$ $\times$ $2\frac{1}{2}$			in. $6\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $3\frac{1}{2}$ $\times$ 2	in. $4\frac{1}{2}$ $\times$ 3	in. $4\frac{1}{2}$ $\times$ 4
	20	in. $8\frac{1}{2}$ $\times$ 3	in. $6\frac{1}{2}$ $\times$ 3	in. $4\frac{1}{2}$ $\times$ 3		in. $3\frac{1}{2}$ $\times$ $2\frac{1}{2}$			in. $7\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $3\frac{1}{2}$ $\times$ 2	in. $4\frac{1}{2}$ $\times$ 3	in. $4\frac{1}{2}$ $\times$ 4
	22	in. $8\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $6\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $4\frac{1}{2}$ $\times$ $3\frac{1}{2}$		in. $3\frac{1}{2}$ $\times$ 3			in. $7\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $3\frac{1}{2}$ $\times$ 2	in. $4\frac{1}{2}$ $\times$ 3	in. $4\frac{1}{2}$ $\times$ 4
	24	in. $9\frac{1}{2}$ $\times$ 4	in. $6\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $4\frac{1}{2}$ $\times$ $3\frac{1}{2}$		in. $4\frac{1}{2}$ $\times$ 3			in. $8\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $3\frac{1}{2}$ $\times$ 2	in. $4\frac{1}{2}$ $\times$ 3	in. $4\frac{1}{2}$ $\times$ 4
	26	in. $9\frac{1}{2}$ $\times$ 4	in. $6\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $5\frac{1}{2}$ $\times$ 4		in. $4\frac{1}{2}$ $\times$ 3			in. $8\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $3\frac{1}{2}$ $\times$ 2	in. $4\frac{1}{2}$ $\times$ 3	in. $4\frac{1}{2}$ $\times$ 4
	28	in. $10\frac{1}{2}$ $\times$ 4	in. $6\frac{1}{2}$ $\times$ 4	in. $5\frac{1}{2}$ $\times$ 4		in. $5\frac{1}{2}$ $\times$ $3\frac{1}{2}$			in. $8\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $3\frac{1}{2}$ $\times$ 2	in. $4\frac{1}{2}$ $\times$ 3	in. $4\frac{1}{2}$ $\times$ 4
	30	in. $10\frac{1}{2}$ $\times$ $4\frac{1}{2}$	in. $7\frac{1}{2}$ $\times$ 4	in. $5\frac{1}{2}$ $\times$ 4		in. $5\frac{1}{2}$ $\times$ $3\frac{1}{2}$			in. $8\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $3\frac{1}{2}$ $\times$ 2	in. $4\frac{1}{2}$ $\times$ 3	in. $4\frac{1}{2}$ $\times$ 4
Queen post	30	in. $9\frac{1}{2}$ $\times$ 4	in. $5\frac{1}{2}$ $\times$ 4	in. $4\frac{1}{2}$ $\times$ 4	in. $4\frac{1}{2}$ $\times$ 4	in. $4\frac{1}{2}$ $\times$ 3	in. $7\frac{1}{2}$ $\times$ 4	in. $4\frac{1}{2}$ $\times$ 4	in. $7\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $4\frac{1}{2}$ $\times$ 2	in. $5\frac{1}{2}$ $\times$ 3	in. $4\frac{1}{2}$ $\times$ 4
	32	in. $9\frac{1}{2}$ $\times$ 4	in. $6\frac{1}{2}$ $\times$ 4	in. $5\frac{1}{2}$ $\times$ 4	in. $5\frac{1}{2}$ $\times$ 4	in. $4\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $7\frac{1}{2}$ $\times$ 4	in. $4\frac{1}{2}$ $\times$ 4	in. $7\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $4\frac{1}{2}$ $\times$ 2	in. $5\frac{1}{2}$ $\times$ 3	in. $4\frac{1}{2}$ $\times$ 4
	34	in. $10\frac{1}{2}$ $\times$ $4\frac{1}{2}$	in. $6\frac{1}{2}$ $\times$ 4	in. $5\frac{1}{2}$ $\times$ 4	in. $5\frac{1}{2}$ $\times$ 4	in. $4\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $8\frac{1}{2}$ $\times$ 4	in. $5\frac{1}{2}$ $\times$ 4	in. $8\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $4\frac{1}{2}$ $\times$ 2	in. $5\frac{1}{2}$ $\times$ 3	in. $4\frac{1}{2}$ $\times$ 4
	36	in. $10\frac{1}{2}$ $\times$ 5	in. $6\frac{1}{2}$ $\times$ $4\frac{1}{2}$	in. $5\frac{1}{2}$ $\times$ $4\frac{1}{2}$	in. $5\frac{1}{2}$ $\times$ $4\frac{1}{2}$	in. $5\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $8\frac{1}{2}$ $\times$ 4	in. $5\frac{1}{2}$ $\times$ $4\frac{1}{2}$	in. $8\frac{1}{2}$ $\times$ $3\frac{1}{2}$	in. $4\frac{1}{2}$ $\times$ 2	in. $5\frac{1}{2}$ $\times$ 3	in. $4\frac{1}{2}$ $\times$ 4

The trusses in the above table to be about 10 feet apart, and the common rafters 14 inches from centre to centre; the feet of the principal rafters, &c. to be secured to the tie beams by proper wrought-iron straps.

**Flooring.**

Joists having a bearing of from 10 to 16 feet to be  $2\frac{1}{2}$  inches in thickness, with  $\frac{3}{4}$  of an inch in depth for every foot, between bearings, and from 16 to 24 feet, to be 3 inches in thickness, with  $\frac{5}{8}$  of an inch in depth for every foot between bearings.

Trimmers and trimming joists to be at least  $\frac{1}{2}$  inch thicker than the common joists.

No floor boards to be less than 1 inch thick when laid.

**Lintels.**

Lintels to be generally 3 inches thick; those to all openings above 3 feet 6 inches wide to have  $1\frac{1}{2}$  inch additional depth for every extra foot of opening; all to be the full width of the wall within the reveal, and to have 9 inches of wall hold at each end.

**Purlins.**

All purlins to be in long lengths, and to be placed on the back of the principal rafters, and supported by blocks; no rafters or ties to be notched to receive them; all joinings to occur over a principal.

**Stairs.**

Risers and treads in no case to be less than 1 inch thick: treads not to be under 9 inches in width, and the rise not to be more than  $7\frac{1}{2}$  inches from step to step.

**SLATE.**

Where roofs are covered with duchess or countless slates, the same should not be laid with a lap of less than 3 or  $2\frac{1}{2}$  inches; each slate to be fastened with two nails, the laths to be  $2\frac{1}{2}$  inches  $\times$   $\frac{1}{4}$  inch.

When slates of a smaller size are used, the lap should not be less than 2 inches and at least every other course double nailed.

Nails for slating to be either copper, zinc, galvanized iron, or nails dipped in oil when in a state of red heat.

The ridges, &c., in all cases to be either covered with lead 6 lbs. to the foot, proper ridge tile crest, set and pointed in cement, or with patent slate ridging with roll, fastened with screws and set in oil putty.

**PLUMBER.**

Flat gutters between roofs, &c. to be laid with lead 7 lbs. to the foot, valleys with 6 lbs., and flashings with not less than 5 lbs.

Cast-iron eaves guttering to be provided to the roofs of all buildings, with proper 3-inch down-pipes connected to drains to carry off the water; the guttering and down-pipes to be of metal not less than one-eighth of an inch thick; to have two coats of paint before being fixed and at least one after. All joints to be put together with red lead.

The use of zinc for gutters between roofs, &c., will not be sanctioned.

**PAINTER.**

All woodwork, &c., usually painted both inside and out to have at least three coats of good oil colour paint, exclusive of knotting and priming, or to be stained and twice varnished.

**VENTILATION.**

Especial attention is called to providing an efficient supply of light and ventilation, both in dwelling-houses and farm-buildings, and the means of doing so should be fully described in the specification, and as far as possible shown on the drawings.

All stables, cow and beasts-houses, should have ventilation provided in the roof, as near the ridge as possible, and also, where practicable, long narrow slits should be formed in the gable walls, also near the ridge.

INCLOSURE COMMISSION,

January, 1879.

*CERTIFICATE authenticating Copies of Absolute Orders.*

The Inclosure Commissioners for England and Wales hereby certify this to be a true copy of the original absolute order.

In testimony whereof they have hereunto caused their official seal to be affixed this       day of       , in the year of our Lord one thousand eight hundred and eighty-       .

**SUPPLEMENTAL PROVISIONAL ORDER.**

No.       .

**FARM BUILDINGS       .       .       Improvements.**

The Inclosure Commissioners for England and Wales hereby sanction the erection of the further buildings hereunder set forth, according to the plans and specifications deposited in their office.

At a total cost not exceeding       .

In witness whereof they have hereunto affixed their hands and seal this       day of       , in the year of our Lord one thousand eight hundred and       .

*PROVISIONAL ORDER under the Limited Owners' Residences Acts, 1870 and 1871, and Improvement of Land Act, 1864.*

County of       , parish of       .

No.       .

Improvement.

The Inclosure Commissioners for England and Wales in pursuance of the Limited Owners' Residences Acts, 1870 and 1871, and the Improvement of Land Act, 1864, do, by this order under hands and seal, sanction the proposed improvements expressed in an application made by       upon the terms and conditions that such improvements be executed in the manner mentioned or specified in the second schedule hereto, and which schedule expresses the general scheme of the improvements to be executed and at an expense not exceeding the sum of       , and do hereby declare and provisionally order that it is right and proper, and for the benefit of the parties interested in the lands mentioned in the first schedule hereto, that the inheritance or fee of such lands should be charged with the said sum of       , together with the costs, charges, and expenses preparatory or in relation to and consequent on the said application for this order, and that the same should, to the whole amount of such respective moneys, be charged in manner following, that is to say, by way of annuity after the rate of       per centum per annum, payable by equal half-yearly payments for the period of       years upon the inheritance of such lands mentioned in such first schedule.

In witness whereof they have hereunto affixed their hands and seal this       day of       , in the year of our Lord one thousand eight hundred and       .

## FIRST SCHEDULE.

*Lands Provisionally charged.*

Name, &c. of Lands.	Land- owner.	Occupier.	Parish.	County.	Total Acreage.	Total Rental.	Nett Rental.
					A. R. P.	£ s. d.	£ s. d.

## SECOND SCHEDULE.

*Improvements.*

*FEES to be taken in respect of Transactions under the Drainage and Land Improvement Acts, in accordance with the provisions of the 31 & 32 Vict. c. 89.*

\* The fees are to be paid by stamps, which will be affixed by the commissioners to the instruments, or the counterparts, or copies of them, which are retained and deposited in the office of the commission.

On the issue of a provisional or other order sanctioning drainage or improvements other than buildings, where the amount does not exceed 1,000l. ....	£ s. d.
For every additional 1,000l. or part of 1,000l. ....	1 0 0
On the issue of a provisional or other order sanctioning outlay on building improvements, which have required the examination of plans and specifications, for every 100l. or part of 100l. sanctioned .....	0 10 0

\* The stamps are to be obtained from Messrs. Waterlow and Sons, 49, Parliament Street, S.W.

In order to facilitate payment in stamps by parties in the country, the commissioners will obtain the necessary stamps if drafts or Post-office Orders are sent to them, payable to Messrs. Waterlow and Sons, and crossed "Imperial Bank." Post-office Orders to be made payable at Charing Cross.



In cases of labourers' cottages where more than one pair is erected on the same plan and specification. For each additional cottage .....	£	s.	d.
On the alteration of plans previously approved .....	0	2	6
On the issue of an absolute order creating a charge on land for drainage or improvements other than buildings.	0	10	0
For every 100 <i>l.</i> or part of 100 <i>l.</i> charged .....	0	5	0
On the transfer of sums previously sanctioned from one to another class of improvement .....	0	10	0
For drawing up the rent-charge table for an absolute order under the Improvement of Land Act, 1864 .....	2	0	0
On the register of an assignment of absolute orders under the Drainage and Improvement Acts.			
For every absolute order assigned .....	0	5	0
On the issue of the recommendation of the Inclosure Commissioners to the grant of a Commission of Sewers, under Part I. of the Land Drainage Act, 1861 .....	5	0	0
On the issue of a provisional order empowering Commissioners of Sewers to take land compulsorily .....	5	0	0
On the issue of an order sanctioning the mortgage of rates or the borrowing of money under the Land Drainage Act, 1861, or any other Act .....	1	0	0
On the issue of an order declaring the alteration of boundaries, under Part I. of the Land Drainage Act, 1861 .....	5	0	0
On the issue of a provisional order constituting a drainage district, under Part II. of the Land Drainage Act, 1861 .....	5	0	0
On the issue of an order of apportionment, or of a release of rent-charge, under the Acts for the Drainage and Improvement of Land .....	1	0	0
On the issue of an order for the Drainage and Improvement of Land, under the Act of 10 & 11 Vict. c. 38 .....	5	0	0
On the issue of a vesting order under the Improvement of Land Act, 1864 .....	0	10	0
On the issue of the commissioners' certificate of persons bound to make periodical payments, under the Improvement of Land Act, 1864 .....	0	10	0

The foregoing list of fees supersedes the list previously published in respect of transactions under the Improvement of Land Act, 1864.

### *Inspection Fee.*

A fee of 2*s.* 6*d.* is taken (in money) for the inspection of any confirmed instrument or other document or register deposited in the office of the commission.

### *Extracts, Maps, &c.*

Extracts from the tithe apportionments, inclosure awards, and other instruments, and also copies or tracings of the tithe and other maps are supplied to the public at the following charges:—

Extracts on paper at the rate of 1*s.* 6*d.* for the quantity usually contained

in one skin of a tithe apportionment. When there is more than the usual quantity of writing, or from other circumstances the labour is increased, a proportionate additional charge must be made.

A copy of a map of a rural district on mounted drawing paper from  $\frac{1}{2}d.$  to  $1\frac{1}{2}d.$  per acre, according to the scale and finish of the map, and the extent and character of the work.

A tracing of a map from  $1s.$  to  $4s.$  per 100 acres, according to the scale of the map and the extent and character of the work.

When a map embraces a town or large village, an addition must be made to the above charges in proportion to the increased labour of the draughtsman.

An estimate of the cost in each case is furnished on application.

## CHAPTER IV.

### THE SETTLED ESTATES ACT, 1877—GENERAL RULES AND ORDERS.

*An Act to consolidate and amend the Law relating  
to Leases and Sales of Settled Estates.*

[28th June, 1877.]

40 & 41 VICT. c. 18.

WHEREAS it is expedient to consolidate and amend the law relating to leases and sales of settled estates :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as Short title.  
"The Settled Estates Act, 1877."

This Act repeals and consolidates (Sect. 58, *post*, p. 240) the Leases and Sales of Settled Estates Acts, 1856—1876, viz., 19 & 20 Vict. c. 120 ; 21 & 22 Vict. c. 77 ; 27 & 28 Vict. c. 45 ; 37 & 38 Vict. c. 33, and 39 & 40 Vict. c. 30.

2. The word "settlement" (*a*) as used in this Act shall signify any Act of Parliament, deed, agreement, copy of court roll, will, or other instrument, or any number of such instruments, under or by virtue of which any hereditaments of any tenure or any estates or interests in any such

Interpre-  
tation of  
"settle-  
ment" and  
"settled  
estates."

hereditaments stand limited to or in trust for any persons by way of succession (b), including any such instruments affecting the estates of any one or more of such persons exclusively.

The term "settled estates" (a) as used in this Act shall signify all hereditaments of any tenure, and all estates or interests in any such hereditaments (c), which are the subject of a settlement; and for the purposes of this Act a tenant-in-tail after possibility of issue extinct shall be deemed to be a tenant for life.

All estates or interests in remainder or reversion not disposed of by the settlement, and reverting to a settlor or descending to the heir of a testator, shall be deemed to be estates coming to such settlor or heir under or by virtue of the settlement (d).

In determining what are settled estates within the meaning of this Act, the Court shall be governed by the state of facts, and by the trusts or limitations of the settlement at the time of the said settlement taking effect (e).

(a) These definitions are identical with those contained in 19 & 20 Vict. c. 120, sect. 1.

Settled  
estates  
within  
the Act.

(b) A testator devised real estate to trustees, upon trust at their discretion to sell, and invest proceeds, and to pay the income to his wife, during her life or widowhood, for the maintenance of his children during their minorities, and on the death or marriage of his wife, the fund and the income thereof were to be in trust for his children in equal shares absolutely:—it was held, that this was a settled estate under the corresponding provision in the repealed Act of 1856. *Re Laing*, L. R., 1 Eq. 416; see also *Collette v. Collette*, L. R., 2 Eq. 203, where the power was for the trustees to sell with the consent of the tenant for life.

Land was devised to trustees upon trust to sell, and invest the proceeds of the sale as directed, and to pay the income resulting from such investment to A. for life, with remainder to his children equally; every sale after A. had attained

twenty-one to be made with his consent; no sale having taken place, it was held that this was a "settled estate." *Re Morgan*, 49 L. J., Ch. 577.

A devise of a house upon trust to permit testator's wife to occupy it during widowhood, and then upon trust for sale, was held to be a "settlement." *Carlyon v. Truscott*, L. R., 20 Eq. 348.

It would appear from these decisions that, notwithstanding the doctrine of constructive conversion, the definition contained in this section will extend to a gift by deed or will to trustees, upon trust for sale, with a direction until sale to pay the rents and profits of the land to a person for life, with a gift over. As to the doctrine of constructive conversion see *Fletcher v. Ashburner*, 1 B. C. C. 499; *Wheldale v. Partridge*, 5 Ves. 396; see also Jarman on Wills, vol. i. p. 584 *et seq.*

Land was conveyed to the use of a trustee in fee upon trust during the joint lives of a husband and wife, for the wife's separate use without power of anticipation, and after her death, if she should die in her husband's lifetime, in trust for such persons as she should by will appoint, and, in default, "in trust for the person or persons whom she should leave her heir or co-heirs at law, and the heirs and assigns of such person or persons respectively," but if she should survive her husband, in trust for such persons as she should by deed or will appoint, and, in default of appointment, upon the trusts declared in the event of her dying in her husband's lifetime. It was held these limitations constituted a "settlement." *Beioley v. Carter*, L. R., 4 Ch. 230.

A testator devised land to trustees in trust to let and manage it during the life of his wife and the minority of his children, and to pay a moiety of the net rents to his wife for life, and subject thereto in trust for his children equally. It was held that the entirety of the land was a "settled estate." *Semble*, that if an undivided share of an estate is settled, the entirety is settled. *Re Shephard*, L. R., 8 Eq. 571.

Where a testator devised land to trustees upon trust to receive the rents, &c., and after deducting expenses of administration of the estate to pay the "net annual rents, interest, and income then left" to A. for life, with remainder over: it was held that A. was not a person entitled to "possession of the rents and profits" of the land, and, consequently, could not grant leases thereof under the Settled Estate Acts. *Re Taylor*, L. R., 20 Eq. 297; but see observations on this point of James, L. J., *S. C.* on appeal, 3 Ch. D. 147.

By sect. 58, sub-sect. ix, of the Settled Land Act, 1882, *ante*, p. 109, a person entitled to income of land for his life, subject to the expenses of management, is to have the powers of a tenant for life under that Act.

A testator devised real estate upon trust to receive the rents and profits and thereout to pay an annuity to his daughter, and after her death, upon trust for her children who should attain twenty-one years, with a gift over; Knight Bruce and

Trusts for sale of land.

Gift for life with remainder to heirs as purchasers.

Gift subject to expenses of management.

Settled Land Act, 1882.

Annuity out of rents and profits.

Infant  
seised in  
fee.

Turner, LL.J., considered that this limitation did not constitute a "settlement." *Re Burden*, 28 L. J., Ch. 840. See, however, *Collette v. Collette*, *ubi supra*.

By sect. 41 of the Conveyancing Act, 1881, it is enacted that "where a person in his own right seised of, or entitled to, land for an estate in fee simple, or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877." This section empowers the Court to grant leases of the estate of an infant, or to sell the same, whether they be in fee simple or under any other tenure, and whether the infant has acquired them under a settlement, or by devise in fee or descent. See *Wolstenholme and Turner's Conv. Acts*, 82. Previously to this Act the Court had no jurisdiction to sell the real estate of infants upon the mere grounds that a sale would be beneficial. *Calvert v. Godfrey*, 6 Beav. 97; see, also, *Re Birtle*, 11 W. R. 739. As to the exercise of powers on behalf of infants by their guardians, see sect. 49 of this Act, *post*, p. 235.

By sect. 59 of the Settled Land Act, 1882, an infant absolutely entitled to land is to be deemed tenant for life for the purposes of that Act, see *ante*, p. 111.

(c) *E.g.* copyholds, *Re Adair*, L. R., 16 Eq. 124; an equity of redemption, *Eyre v. Saunders*, 5 Jur., N. S. 704. The Court has no jurisdiction under this Act to order a sale of chattels settled as heirlooms. *D'Eyncourt v. Gregory*, 3 Ch. D. 635. See as to heirlooms, Settled Land Act, 1882, sect. 37, *ante*, p. 76.

(d) This definition is identical with 21 & 22 Vict. c. 77, s. 1.

(e) This definition is identical with 27 & 28 Vict. c. 45, s. 3, which was enacted to remove doubts which had been entertained. See *Re Goodwin*, 3 Giff. 620.

Interpre-  
tation of  
"the  
Court"  
(f).

**3.** The expression "the Court" in this Act shall, so far as relates to estates in England, mean the High Court of Justice, and all causes and matters in respect of such estates commenced or continued under this Act shall, subject to the provisions of the Judicature Acts, be assigned to the Chancery Division of the High Court of Justice in like manner as if such causes and matters had arisen under an Act of Parliament by which, prior to the passing of the Judicature Acts, exclusive jurisdiction in respect of such causes and matters had been given to the Court of Chancery, or to any judges or judge thereof respectively.

The expression "the Court" in this Act shall, so far as relates to estates in Ireland, mean the Court of Chancery in Ireland (*g*).

(*f*) By sect. 38, *post*, p. 229, the Court may exercise its powers repeatedly, but may not exercise them if expressly negatived by the settlement, nor (sect. 39) so as to authorize any act which could not have been authorized by the settlor. Powers of "Court."

By sect. 44, *post*, p. 232, the Court of Chancery of the County Palatine of Lancaster has concurrent jurisdiction, so far as relates to estates within that county. Palatine Court.

Where the powers of the Court under the repealed Acts did not meet the requirements of the case, it was directed that an application shall be made to Parliament. *Cust v. Middleton*, 3 De G., F. & J. 33; *Savile v. Bruce*, 29 Beav. 559. Private Act of Parliament.

(*g*) As to the jurisdiction of the Court in Ireland, see sect. 45, *post*, p. 233. Ireland.

By 40 & 41 Vict. c. 57, s. 36, the jurisdiction of the Irish Court of Chancery and of the Landed Estates Court is transferred to the Chancery Division of the High Court of Justice in Ireland.

4. It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, to authorize leases of any settled estates, or of any rights or privileges over or affecting any settled estates, for any purpose whatsoever, whether involving waste (*i*) or not, provided the following conditions be observed: Power to authorize leases of settled estates (*h*).

First. Every such lease shall be made to take effect in possession (*j*) at or within one year next after the making thereof, and shall be for a term of years not exceeding for an agricultural or occupation lease, so far as relates to estates in England twenty-one years, or so far as relates to estates in Ireland thirty-five years, and for a mining lease (*k*) or a lease of water mills, way leaves, water

leaves, or other rights or easements forty years, and for a repairing lease sixty years, and for a building lease ninety-nine years: Provided always, that any such lease (except an agricultural lease) may be for such term of years as the Court shall direct (*k*), where the Court shall be satisfied that it is the usual custom of the district and beneficial to the inheritance to grant such a lease for a longer term than the term hereinbefore specified in that behalf:

Secondly. On every such lease shall be reserved the best rent (*l*) or reservation in the nature of rent, either uniform or not, that can be reasonably obtained, to be made payable half yearly or oftener without taking any fine or other benefit in the nature of a fine: Provided always, that in the case of a mining lease, a repairing lease, or a building lease a peppercorn rent or any smaller rent than the rent to be ultimately made payable may, if the Court shall think fit so to direct, be made payable during all or any part of the first five years of the term of the lease:

Thirdly. Where the lease is of any earth, coal, stone, or mineral, a certain portion of the whole rent or payment reserved shall be from time to time set aside and invested as hereinafter mentioned, namely, when and so long as the person for the time being entitled to the receipt of such rent is a person who by reason of his estate or by virtue of any declaration in the settlement is entitled to work



such earth, coal, stone, or mineral for his own benefit, one fourth part of such rent, and otherwise three fourth parts thereof; and in every such lease sufficient provision shall be made to ensure such application of the aforesaid portion of the rent by the appointment of trustees or otherwise as the Court shall deem expedient:

Fourthly. No such lease shall authorize the felling of any trees except so far as shall be necessary for the purpose of clearing the ground for any buildings, excavations, or other works authorized by the lease:

Fifthly. Every such lease shall be by deed, and the lessee shall execute a counterpart thereof, and every such lease shall contain a condition for re-entry on nonpayment of the rent for a period of twenty-eight days after it becomes due, or for some less period to be specified in that behalf.

(h) This section varies the provisions of 19 & 20 Vict. c. 120, s. 2, and 21 & 22 Vict. c. 77, ss. 2, 4.

(i) As to waste see note (r), *ante*, p. 68.

(j) The Court may authorize a new lease upon the surrender of an existing lease, although an under-lease granted by the lessee is unexpired. *Re Ford*, L. R., 8 Eq. 309. See *Re Cross's Charity*, 27 Beav. 592.

(k) A mining lease under this section may include surface land required for working the minerals, *Re Reveley*, 11 W. R. 744; and a grant of wayleaves, *Re Lord Wallace*, W. N., 1869, p. 67; and see as to leases under the Settled Land Act, *ante*, p. 45.

(l) In estimating the best rent the value of a lease surrendered may be taken into account. *Re Rawlins*, L. R., 1 Eq. 286; see also *Re Chambers*, 6 Jur., N. S. 1005. It was held, in *Cust v. Middleton*, 3 De G., F. & J. 33, that the Court had no power under the Leases and Sales of Settled Estates Act, 1866, to authorize building leases at a nominal rent during the first few years of the term, and that an Act of Parliament must be applied for. Best rent.

As to evidence to be furnished that the proposed lease is proper and consistent with the interests of all parties, see Ord. 15, *post*, p. 244.

Leases may contain special covenants (*m*).

5. Subject and in addition to the conditions herein-before mentioned, every such lease shall contain such covenants, conditions, and stipulations as the court shall deem expedient with reference to the special circumstances of the demise.

Conditions.

(*m*) See as to conditions to be contained in leases authorized by the Court, Ord. 25, *post*, p. 245.

As to what are "usual covenants," see *Dav. Conv.* vol. v., p. 47.

In *Re Chambers*, 28 Beav. 653, building leases were authorized in consideration of the lessee undertaking to make roads.

Parts of settled estates may be leased.

6. The power to authorise leases conferred by this Act shall extend to authorise leases either of the whole or any parts of the settled estates, and may be exercised from time to time.

Leases may be surrendered and renewed.

7. Any leases, whether granted in pursuance of this Act or otherwise, may be surrendered either for the purpose of obtaining a renewal of the same or not, and the power to authorise leases conferred by this Act shall extend to authorise new leases of the whole or any part of the hereditaments comprised in any surrendered lease (*n*).

(*n*) See *Re Rawlins*, L. R., 1 Eq. 286; and see note (*j*), p. 209.

Power to authorize leases to extend to preliminary contracts (*o*).

8. The power to authorise leases conferred by this Act shall extend to authorise preliminary contracts to grant any such leases, and any of the terms of such contracts may be varied in the leases.

(*o*) Such contracts must be in accordance with the provisions of the Act. *Cust v. Middleton*, 3 De G., F. & G. 33.

9. All the powers to authorise and to grant leases contained in this Act shall be deemed to include respectively powers to authorise the lords of settled manors and powers to the lords of settled manors to give licences to their copyhold or customary tenants to grant leases of lands held by them of such manors to the same extent and for the same purposes as leases may be authorized or granted of freehold hereditaments under this Act (*p*).

Powers of leasing to include powers to lords of settled manors to give licences to their copyhold or customary tenants to grant leases.

(*p*) See as to saving the rights of the lords of manors, sect. 56, *post*, p. 239.

10. The power to authorise leases conferred by this Act may be exercised by the Court either by approving of particular leases or by ordering that powers of leasing, in conformity with the provisions of this Act, shall be vested in trustees in manner hereinafter mentioned (*q*).

Made in which leases may be authorized.

(*q*) See form of order to grant a particular lease, Seton, p. 1491. Where an assignee of a tenant for life applied for powers to grant a particular lease and also for a general power of leasing, the latter power was refused. *Re Hutchinson*, 14 L. T., N. S. 129.

Form of order. General powers.

11. When application is made to the Court either to approve of a particular lease or to vest any powers of leasing in trustees, the Court shall require the applicant to produce such evidence as it shall deem sufficient to enable it to ascertain the nature, value, and circumstances of the estate, and the terms and conditions on which leases thereof ought to be authorized.

What evidence to be produced on an application to authorise leases (*r*).

(*r*) As to what is sufficient evidence, see Order 15, *post*, p. 244. Evidence.

After approval of a lease, Court to direct who shall be the lessor.

12. When a particular lease or contract for a lease has been approved by the Court, the Court shall direct what person or persons shall execute the same as lessor; and the lease or contract executed by such person or persons shall take effect in all respects as if he or they was or were at the time of the execution thereof absolutely entitled to the whole estate or interest which is bound by the settlement, and had immediately afterwards settled the same according to the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the Court shall direct.

Powers of leasing may be vested in trustees (s).

13. Where the Court shall deem it expedient that any general powers of leasing any settled estates conformably to this Act should be vested in trustees, it may by order vest any such power accordingly either in the existing trustees of the settlement or in any other persons, and such powers, when exercised by such trustees, shall take effect in all respects as if the power so vested in them had been originally contained in the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the Court shall direct; and in every such case the Court, if it shall think fit, may impose any conditions as to consents or otherwise on the exercise of such power, and the Court may also authorize the insertion of provisions for the appointment of new trustees from time to time for the purpose of exercising such powers of leasing as aforesaid.

General power.

(s) The Court has vested in trustees general powers of grant-

ing building leases for longer than the statutory term (*Re Cross*, 27 Beav. 592), and of granting mining leases (*Re Green*, 10 Jur., N. S. 1098); but the Court refused to vest general powers of granting mining leases in trustees where remaindermen objected. *Re Hutchinson*, 14 W. R. 473.

Where general powers of granting mining leases were vested in trustees under the corresponding sect. 10 of the Leases and Sales of Settled Estates Act, 1856, the Court empowered the trustees to grant wayleaves over other parts of the settled land. *Re Wallace*, W. N. 1869, p. 66.

In *Tolson v. Sheard* (5 Ch. D. 19), the Court refused to sanction a single demise by trustees of two properties held upon distinct trusts.

Single lease of several properties.

For forms of orders under this section, see Seton, p. 485. The power granted by the order should be endorsed on the settlement. *Re Cross*, *ubi supra*; see also sect. 33, *post*, p. 225.

14. Provided always, that in orders under this Act for vesting any powers of leasing in any trustees or other persons, no conditions shall be inserted requiring that the leases thereby authorized should be submitted to or be settled by the Court or a judge thereof, or be made conformable with a model lease deposited in the judge's chambers, save only in any case in which the parties applying for the order may desire to have any such condition inserted, or in which it shall appear to the Court that there is some special reason rendering the insertion of such a condition necessary or expedient.

Conditions that leases be settled by the Court not to be inserted in orders made under this Act (i).

(i) As to model leases, see *Re Chambers*, 28 Beav. 653; 8 W. R. 646; *Re Earl of Jersey*, 9 W. R. 609; *Att.-Gen. v. Christ Church, Oxford*, 3 Giff. 514.

Model lease.

15. Provided also, that in all cases of orders (whether under this Act or under the corresponding enactment of the Acts hereby repealed) in which any such condition as last aforesaid shall have been inserted, it shall be lawful for any party interested to apply to the Court (a) to alter and amend such order by striking out such

Conditions where inserted may be struck out.

condition, and the Court shall have full power to alter the same accordingly, and the order so altered shall have the same validity as if it had originally been made in its altered state; but nothing herein contained shall make it obligatory on the Court to act under this provision in any case in which from the evidence which was before it when the order sought to be altered was made, or from any other evidence, it shall appear to the Court that there is any special reason why in the case in question such a condition is necessary or expedient.

(v) As to form of application under this section, see Ord. 27, *post*, p. 246.

Court may authorize sales of settled estates and of timber (w).

**16.** It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, from time to time to authorize a sale (x) of the whole or any parts of any settled estates or of any timber (not being ornamental timber) (y) growing on any settled estates, and every such sale shall be conducted and confirmed in the same manner as by the rules and practice of the Court for the time being is or shall be required in the sale of lands sold under a decree of the Court (z).

Sale out of Court.

(w) As to who may petition, see sect. 23.

A sale out of Court has been directed under this section, the purchase-money being paid into Court; such a sale may be made by public auction or private contract, subject to a reserved price to be fixed by the judge in chambers. *Re Adams*, 9 Ch. D. 116; but see *Re Dryden*, 50 L. J., Ch. 752; and *Re Harvey*, 30 W. R. 697; where it was held that the Court had no jurisdiction to authorize a sale out of Court under this

Act. When property comprised copyholds as well as freeholds, the Court directed the copyholds to be enfranchised before the sale, and the costs of enfranchisement to be paid out of the proceeds of the sale. *Re Adair*, L. R., 16 Eq. 124.

The Court will only approve of particular sales, but will not give to the trustees a general power of sale (*Re Peacock*, 15 W. R. 100); except under special circumstances. *Re Andrew*, 26 W. R. 811. For form of order authorizing a sale, see Seton, pp. 1496 *et seq.* As to orders for sale with an indefeasible title, see the Land Transfer Act, sect. 49.

General power.

The Court will direct an inquiry before authorizing a sale of settled land to the tenant for life. *Re Hilton*, W. N. 1866, p. 107; see also note (h), *ante*, p. 105.

25 & 26  
Vict. c. 53.

As to sales of mines and minerals apart from the surface, *Re Law*, 7 Jur., N. S. 511; *Re Milward*, L. R., 6 Eq. 248; and see sect. 19, *infra*.

By the Confirmation of Sales Act, 1862 (25 & 26 Vict. c. 108), s. 2, it is provided that trustees may dispose of the surface or minerals separately with the sanction of the Court.

(x) This Act gives no power to the Court to authorise exchanges, which have hitherto been effected under the Inclosure Acts. A tenant for life has now power to effect exchanges of settled land, under the Settled Land Act, 1882, *ante*, p. 105, note (h).

(y) As to ornamental timber, see *ante*, p. 69.

Every petition is to contain in the body thereof, or in a schedule, or by plan annexed, a detailed description of the property, Ord. 2, *post*, p. 241; and such description must be contained in the order for sale. *Re Roper*, 2 N. R. 442.

(z) See generally as to the practice of the Court with regard to sales under this Act, Dan. Ch. Pr. 2323; see, also, Middleton, p. 19.

## 17. [Repealed by Settled Land Act, 1882, s. 64.]

(a) This section is re-enacted, with a variation, by sect. 36 of the Settled Land Act, 1882, *ante*, p. 75.

Proceedings for protection (a).

18. When any land is sold for building purposes it shall be lawful for the Court, if it shall see fit, to allow the whole or any part of the consideration to be a rent issuing out of such land, which may be secured and settled in such manner as the Court shall approve.

Consideration for land sold for building may be a fee-farm rent.

19. On any sale of land any earth, coal, stone, or mineral may be excepted, and any rights or privileges may be reserved, and the purchaser

Minerals, &c. may be excepted from sales (b).

may be required to enter into any covenants or submit to any restrictions which the Court may deem advisable.

(b) The Court has jurisdiction to sell the mines apart from the surface, and on such sale to grant rights of using the surface for the purpose of working the mines sold. *Re Law*, 7 Jur., N. S. 511; *Re Mallin*, 3 Giff. 126. A rent in respect of the surface damaged from time to time may be reserved. *Re Milward*, L. R., 6 Eq. 248. Part of the surface may be included in a lease of minerals. *Re Revely*, 11 W. R. 744.

Court may authorize dedication of any part of settled estates for streets, roads and other works (c).

**20.** It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, from time to time to direct that any part of any settled estates be laid out for streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or water-courses, either to be dedicated to the public or not (d); and the Court may direct that the parts so laid out shall remain vested in the trustees of the settlement, or be conveyed to or vested in any other trustees upon such trusts for securing the continued appropriation thereof to the purposes aforesaid in all respects, and with such provisions for the appointment of new trustees when required, as by the Court shall be deemed advisable.

(c) The Court will not always require plans to be produced. *Re Hargrave*, 15 W. R. 54.

(d) This section does not empower the Court to direct the carrying out of drainage for agricultural purposes. The powers given by this and the following sections have reference exclusively to the development of land for building purposes. *Poynder v. Cook*, 50 L. J., Ch. 753.

As to laying out and making

**21.** Where any part of any settled estates is directed to be laid out for such purposes as afore-



said, the Court may direct that any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, including all necessary or proper fences, pavings, connections, and other works incidental thereto respectively, be made and executed, and that all or any part of the expenses in relation to such laying out and making and execution be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estates, or be raised and paid out of the rents and profits of the settled estates or any part thereof, or out of any moneys or investments representing moneys liable to be laid out in the purchase of hereditaments to be settled in the same manner as the settled estates, or out of the income of such moneys or investments, or out of any accumulations of rents, profits, or income; and the Court may also give such directions as it may deem advisable for any repair or maintenance of any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, or other works, out of any such rents, profits, income, or accumulations during such period or periods of time as to the Court shall seem advisable.

(e) This section extends the provisions of the repealed act, 39 & 40 Vict. c. 30, s. 1.

**22.** On every sale or dedication to be effected as hereinbefore mentioned the Court may direct what person or persons shall execute the deed of conveyance; and the deed executed by such person or persons shall take effect as if the settlement had contained a power (h) enabling such person or

and executing and maintaining streets, roads, and other works, and expenses thereof (e).

How sales and dedications are to be effected under the direction of the Court (g).

persons to effect such sale or dedication, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the Court shall direct.

Conveyances.

(g) As to conveyances on sales under this Act being settled by the Court, see *Re Eyre*, 4 K. & J. 268. See also Seton, p. 1503.

Where the legal estate was vested in eleven persons it was held that the Court had no power to direct that one only of such persons should execute the conveyance. *Re Hole*, W. N. 1868, p. 70.

Order for sale.

(h) The Court has ordered a sale notwithstanding the existence of a power of sale in the settlement. *Re Thompson*, Johns. 424; *Re Morgan*, L. R., 9 Eq. 587.

The order for sale binds both the legal and equitable interest. *Eyre v. Saunders*, 7 W. R. 366.

Application by petition to exercise powers conferred by this Act.

**23.** Any person entitled to the possession or to the receipt of the rents and profits of any settled estates for a term of years determinable on his death, or for an estate for life or any greater estate, and also any person entitled (a) to the possession or to the receipt of the rents and profits of any settled estates as the assignee of any person who but for such assignment would be entitled to such estates for a term of years determinable with any life, or for an estate for any life or any greater estate, may apply to the Court by petition in a summary way to exercise the powers conferred by this Act (b).

Person entitled.

(a) "Entitled" means beneficially entitled. *Grey v. Jenkins*, 26 Beav. 351; see also *Taylor v. Taylor*, L. R., 1 Ch. D. 430; *S. C.* on appeal L. R., 3 Ch. D. 145.

Amendment of petition.

(b) Where after a petition had been served and advertised the petitioner died, it was held that the petition might be amended and a new petitioner substituted. *Re Wilkinson*, L. R., 9 Eq. 71.

Questions of construction.

Questions of construction will not be tried on petition under this Act, but an order for sale may be made on the petition of persons in whom, or one of them, the entire beneficial interest is vested, reserving the question. *Re Williams*, 20 W. R. 967.

Setting

A petition under this Act cannot be set down for hearing

until the expiration of twenty-one days after the publication of the last of the advertisements, as required by Cons. Ord. XLI. r. 20, although the petitioner may thereby be thrown over the long vacation. *Re Townsend*, L. R., 14 Eq. 433; but see *Re Taylor*, *ib.* 557.

As to petitions under this Act, see Ords. 2 and 31, *post*, pp. 241, 246; see also Appendix, Form 1.

**24.** Subject to the exceptions hereinafter contained, every application to the Court must be made with the concurrence or consent of the following parties, namely:

With whose consent such application to be made.

Where there is a tenant in tail under the settlement in existence and of full age, then the parties to concur or consent shall be such tenant in tail, or if there is more than one such tenant in tail, then the first of such tenants in tail and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenant in tail, and all trustees having any estate or interest on behalf of any unborn child prior to the estate of such tenant in tail;

And in every other case the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under or by virtue of the settlement, and also all trustees having any estate or interest on behalf of any unborn child (c).

(c) Under the repealed Act of 1856 all persons beneficially interested must have concurred in the application. *Grey v. Jenkins*, 26 Beav. 351; see also *Re Merry*, 15 W. R. 307.

Consents.

Property was devised on trust after the death of the tenant for life to sell and divide the proceeds among numerous persons absolutely, with power for the trustee to give receipts; on a petition by the tenant for life for sale of the property, the consent of all the beneficiaries was held to be necessary. *Re Ives*, 3 Ch. D. 690.

The Court has, however, dispensed with service on persons remotely interested. *Re Marquis of Cholmondeley*, W. N. 1866, p. 388.

The persons whose consent is here required to an application are persons whose consents are capable of being obtained. Therefore, where freeholds were limited in trust for A. for life, with remainder (subject to a power of appointment by A.) in trust "for the person whom A. should leave her heir-at-law" in fee; it was held that an order for sale was not invalid by reason of the non-concurrence of the unascertained contingent remainderman. *Beioley v. Carter*, L. R., 4 Ch. A. 230; see also *Re Strutt*, L. R., 16 Eq. 629.

Land was devised to trustees in trust for A. for life, and after her death upon trust to sell and hold the proceeds upon trusts mentioned in the will, with the usual power to give receipts: it was held that the consent of persons interested in the proceeds of sale was not necessary to an order authorizing the trustees to grant building leases under the Settled Estates Acts. *Re Pott*, 16 Eq. 631, n.

A testator, being entitled to land in fee, subject to a shifting clause, if he died without leaving issue living at his death who should attain twenty-one years, in favour of A., devised all his real estate upon trust for sale, and died, leaving four children, the eldest of whom was twelve years old; it was held that A.'s interest was too remote to entitle him to oppose an order for sale. *Re Spurway*, 10 Ch. D. 230.

It has been held that trustees cannot concur on behalf of a born child. *Re Ives*, 3 Ch. D. 690; see also *Re Dendy*, 4 Ch. D. 879.

By Ord. XVI. r. 7, of the Rules of Court, 1875, beneficiaries may be represented in actions by their trustees. *Re Cooper, Cooper v. Vesey*, 20 Ch. D. 611. And in an action for sale and partition, it was held that trustees for sale sufficiently represented their *cestuis que trusts*, and a sale and partition were directed without notice to the parties beneficially interested. *Stare v. Gage*, 8 Ch. D. 451. And in *Simpson v. Denny*, 10 Ch. D. 28, Jessel, M. R., said that Ord. XVI. r. 7, applies to actions under the Partition Acts.

By sect. 30, *post*, p. 223, notices of applications are to be served on all trustees, &c.

Court may dispense with consent in respect of certain estates (d).

**25.** Provided always, that where an infant is tenant in tail under the settlement, it shall be lawful for the Court, if it shall think fit, to dispense with the concurrence or consent of the person, if only one, or all or any of the persons, if more than one, entitled, whether beneficially or

otherwise, to any estate or interest subsequent to the estate tail of such infant.

(d) This is a new enactment.

As to consents on behalf of infants tenants in tail by their guardians, see Ords. 6, 9, 11, *post*, p. 242.

**26.** Provided always, that where on an application under this Act the concurrence or consent of any such person as aforesaid shall not have been obtained, notice shall be given to such person in such manner as the Court to which the application shall be made shall direct, requiring him to notify within a time to be specified in such notice whether he assents to or dissents from such application, or submits his rights or interests so far as they may be affected by such application to be dealt with by the Court, and every such notice shall specify to whom and in what manner such notification is to be delivered or left. In case no notification shall be delivered or left in accordance with the notice and within the time thereby limited, the person to or for whom such notice shall have been given or left shall be deemed to have submitted his rights and interests to be dealt with by the Court.

Notice to be given to persons who do not consent to or concur in the application (e).

(e) This section re-enacts the provisions contained in sect. 2 of the repealed Act of 1874. 37 & 38 Vict. c. 33.

Real property was settled in trust for J. for life, with remainder for her children, and in default of such children for S. and E., but if either should die without leaving issue who should attain twenty-one, for the survivor absolutely: J., S. and E. had powers of appointment and of sale of the property. E.'s interest was settled on her marriage; J. was living unmarried; on a petition by the trustees and J. for approval of a contract for the sale of part of the property, it was held that the children of E. were necessary parties, and that notice of the petition, must under the Act of 1874, be served on their father. *Re Dendy*, 4 Ch. D. 879.

Where the consent of a person of unsound mind, not so found by inquisition, is required to a petition under this Act,

notice should be served on him personally and also on the person in whose care he is. *Re Crabtree*, L. R., 10 Ch. A. 201.

As to dispensing with consents under this section, see as to legatees with charges on the property, *Re Legge*, 6 W. R. 20; *Re Parry's Will*, 34 Beav. 462; and as to lunatics having remote interests, *Re Franklin*, 7 W. R. 45; and see sect. 28, *infra*.

As to notice under this section, see Ord. 4, *post*, p. 241, and Ord. 22, *post*, p. 245.

Court may  
dispense  
with notice  
under  
certain  
circum-  
stances<sup>(f)</sup>.

**27.** Provided also, that where on an application under this Act the concurrence or consent of any such person as aforesaid shall not have been obtained, and in case such person cannot be found, or in case it shall be uncertain whether he be living or dead, or in case it shall appear to the Court that such notice as aforesaid cannot be given to such person without expense disproportionate to the value of the subject-matter of the application, then and in any such case the Court, if it shall think fit, either on the ground of the rights or interests of such person being small or remote, or being similar to the rights or interests of any other person or persons, or on any other ground, may by order dispense with notice to such person, and such person shall thereupon be deemed to have submitted his rights and interests to be dealt with by the Court.

<sup>(f)</sup> This is a new enactment.

Where one of the persons interested was a married woman, residing in New Zealand, the Court refused to make an order without serving her with notice by letter, requiring her to notify her assent or dissent within a limited time. *Re Rylar*, 24 W. R. 949.

See as to circumstances under which the Court has dispensed with service, *Re Chamberlain*, 23 W. R. 852; *Re Lewis*, 24 W. R. 103.

Court may  
dispense  
with con-

**28.** An order may be made upon any application notwithstanding that the concurrence or consent

of any such person as aforesaid shall not have been obtained or shall have been refused, but the Court in considering the application shall have regard to the number of persons who concur in or consent to the application, and who dissent therefrom, or who submit or are to be deemed to submit their rights or interests to be dealt with by the Court, and to the estates or interests which such persons respectively have or claim to have in the estate as to which such application is made; and every order of the Court made upon such application shall have the same effect as if all such persons had been consenting parties thereto.

sent, having regard to the number and interests of parties.

**29.** Provided nevertheless, that it shall be lawful for the Court, if it shall think fit, to give effect to any petition subject to and so as not to affect the rights, estate, or interest of any person whose concurrence or consent has been refused, or who has not submitted or is not deemed to have submitted his rights or interests to be dealt with by the Court, or whose rights, estate, or interests ought in the opinion of the Court to be excepted (*g*).

Petition may be granted without consent, saving rights of non-consenting parties.

(*g*) Orders are made under the corresponding sect. 18 of the Act of 1856, saving the rights of numerous pecuniary legatees. *Re Legge*, 6 W. R. 20; *Re Parry's Will*, 34 Beav. 462.

**30.** Notice of any application to the Court under this Act shall be served on all trustees who are seised or possessed of any estate in trust for any person whose consent or concurrence to or in the application is hereby required, and on any other parties who in the opinion of the Court

Notice of application to be served on all trustees, &c. (*h*)

ought to be so served, unless the Court shall think fit to dispense with such notice.

(h) Evidence of service on trustees under this section must be produced. Ord. 16, *post*, p. 244.

Notice of application to be given in newspapers if Court direct (i).

**31.** Notice of any application to the Court under this Act shall, if the Court shall so direct, but not otherwise, be inserted in such newspapers as the Court shall direct, and any person or body corporate, whether interested in the estate or not, may apply to the Court by motion for leave to be heard in opposition to or in support of any application which may be made to the Court under this Act; and the Court is hereby authorized to permit such person or corporation to appear and be heard in opposition to or support of any such application, on such terms as to costs or otherwise, and in such manner, as it shall think fit.

Advertisements.

(i) This section varies the provisions of 19 & 20 Vict. c. 120, s. 20.

Advertisements are only directed under special circumstances. *Re Lord Kilmorey*, 26 W. R. 54.

Advertisements have been held to be sufficient, notwithstanding omissions or errors with regard to names or addresses of petitioners and others. *Re Whiteley*, L. R., 8 Eq. 574; *Re Bicknell*, L. R., 14 Eq. 467; *Re Hemsley*, L. R., 16 Eq. 315; *Re Snell*, 19 W. R. 1000. So, where after advertisement, but before hearing of the petition, a female petitioner married, fresh advertisements were dispensed with. *Re Marshall*, L. R., 15 Eq. 66.

No application under this Act to be granted where a similar application has been rejected by Parliament.

**32.** The Court shall not be at liberty to grant any application under this Act in any case where the applicant, or any party entitled, has previously applied to either House of Parliament for a private Act to effect the same or a similar object, and such application has been rejected on its merits (k),



or reported against by the judges to whom the bill may have been referred (l).

(k) The Court will, in the absence of evidence to the contrary, assume that a rejection by Parliament was on the merits. *Re Wilson*, 1 L. T., N. S. 25; *Shrewsbury v. Scott*, 6 C. B., N. S. 221.

(l) Evidence must be produced to satisfy the Court on these points. See Settled Estates Act Orders, 1878, Ord. 17, *post*, p. 244.

**33.** The Court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this Act shall be placed on the settlement or on any copies thereof, or otherwise recorded in any way it may think proper, in all cases where it shall appear to the Court to be practicable and expedient for preventing fraud or mistake.

Notice of the exercise of powers to be given as directed by the Court (m).

(m) Where the land dealt with is in a register county, notice under this section may be given by directing a memorial of the order to be registered. See Ord. 23, *post*, p. 245.

**34.** All money to be received on any sale effected under the authority of this Act, or to be set aside out of the rent or payments reserved on any lease of earth, coal, stone, or minerals as aforesaid, may, if the Court shall think fit, be paid to any trustees of whom it shall approve, or otherwise the same, so far as relates to estates in England, shall be paid into Court *ex parte* the applicant in the matter of this Act, and so far as relates to estates in Ireland shall be paid into the Bank of Ireland to the account of the accountant-general *ex parte* the applicant in the matter of this Act; and such money shall be applied as the Court shall from time to time direct to some one or more of the following purposes (o), namely,—

Payment and application of moneys arising from sales or set aside out of rent, &c. reserved on mining leases (n).

So far as relates to estates in England the pur-

chase or redemption of the land tax, and so far as relates to estates in Ireland the purchase or redemption of rentcharge in lieu of tithes, crown rent, or quit rent.

The discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid, or affecting any other hereditaments subject to the same uses or trusts; or

The purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid (*p*); or

The payment to any person becoming absolutely entitled (*q*).

(*n*) This section varies 19 & 20 Vict. c. 120, s. 23.

Payment  
into Court.

(*o*) But now money paid into Court under this Act may, in addition to the mode of dealing therewith authorized by this and the following sections, be applied and invested as capital money arising under the Settled Land Act, 1882. See sect. 32 of that Act, *ante*, p. 72.

(*p*) The Court has no power under this Act to charge, mortgage, or sell part of a settled estate in order to raise money for making roads and sewers on building land forming other part of the estate, nor to apply for that purpose money liable to be laid out in the purchase of land to be settled to the same uses as the settled estate. *Re Venour*, 2 Ch. D. 522.

The Court may, however, order purchase money under this section to be expended in permanent improvements, such as the erection of new buildings on, or drainage of the settled estate. *Re Newman*, L. R., 9 Ch. A. 681; *Re Clitheroe*, 17 W. R. 345; *Drake v. Trefusis*, L. R., 10 Ch. A. 367; *Re Speer*, 3 Ch. D. 262.

Disentail-  
ing deed.

(*q*) It was held by the late Vice-Chancellor Malins that it is not necessary for a tenant in tail to execute a disentailing deed in order to entitle him to have the proceeds of sale of settled estate paid to him out of Court. *Re Row*, L. R., 17 Eq. 300; and *Re Wood*, L. R., 20 Eq. 372. But in *Re Broadwood* (1 Ch. D. 438), Jessel, M. R., required a disentailing deed to be executed; and this view was confirmed by the Court of Appeal in *Re Reynolds* (3 Ch. D. 61). An affidavit of no incumbrances will be required. *Thornhill v. Milbank*, 12 W. R. 523.

For forms of orders under this section, see Seton, 531, 533.

The Court has ordered the proceeds of the sale of settled estates, sold during the life of a tenant for life, to be paid to the trustees to be held by them upon the trusts declared in the settlement. *Re Morgan*, L. R., 9 Eq. 587.

The proceeds of sales under this Act must be treated as realty. *Foster v. Foster*, 1 Ch. D. 588; *Mildmay v. Quicke*, 6 Ch. D. 553. So, too, as regards capital money arising under the Settled Land Act, 1882, *ante*, p. 55.

In a partition suit real estate was ordered to be sold and the proceeds of sale were paid into Court. Three of the persons entitled died intestate, leaving their father their heir-at-law and sole next of kin. He took out administration, but died intestate. It was held that he took the children's shares as their heir-at-law, but that on his death they passed to his personal representative as money. *Mordaunt v. Benwell*, 19 Ch. D. 302.

Conversion.

**35.** The application of the money in manner aforesaid may, if the Court shall so direct, be made by the trustees (if any) without any application to the Court (s), or otherwise upon an order of the Court upon the petition of the person who would be entitled to the possession or the receipt of the rents and profits of the land if the money had been invested in the purchase of land (t).

Trustees may apply moneys in certain cases without application to Court (r).

(r) A similar mode of proceeding is still to be followed where money in Court under this Act is intended to be applied as capital arising under the Settled Land Act, 1882, see *ante*, p. 72.

(s) See *Re Peacock*, 15 W. R. 100. On a petition for confirmation of a contract for sale, the Court directed the investment of the purchase money in manner provided by sect. 34, *supra*, without any farther application. *Re Hoare*, 30 W. R. 177.

(t) In making an order for interim investment, the Court ordered the particular investment proposed to be specified in the order. *Re Taylor*, 28 W. R. 594.

As to service on persons interested of a petition for investment, see *Re Bolton Estates Act*, 19 W. R. 429.

**36.** Until the money can be applied as aforesaid, the same shall be invested as the Court shall direct in some or one of the investments in which cash under the control of the Court is for the time

Until money can be applied to be invested, and dividends to be paid

to parties entitled (u).

being authorized to be invested, and the interest and dividends of such investments shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land.

(u) This section varies 19 & 20 Vict. c. 120, s. 25.

This section gives statutory confirmation to the decisions in *Re Thorold*, L. R., 14 Eq. 31; *Re Taddy*, L. R., 16 Eq. 532.

As to investments of cash under the control of the Court, see Ch. Funds Rules, 1874, r 65. See also as to the necessity for a written request for investment by the person paying in the money, *Re Woodcock*, L. R., 13 Eq. 183.

Court may direct application of money in respect of leases or reversions as may appear just (x).

**37.** Where any purchase money paid into Court under the provisions of this Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Effect of section.

(x) This provision is similar to sect. 74 of the Lands Clauses Consolidation Act, 1845. An almost identical provision is contained in sect. 34 of the Settled Land Act, 1882, *ante*, p. 73.

The effect of this provision is "to enable the Court, at its discretion, to apply to matters arising out of this Act the principles of apportionment which obtain under the Lands Clauses Consolidation Act, whether as between tenants for life and remaindermen, or as between termors and reversioners, or as between lessors and lessees." Middleton, p. 47.

**38.** The Court shall be at liberty to exercise any of the powers conferred on it by this Act, whether the Court shall have already exercised any of the powers conferred by this Act in respect of the same property or not; but no such powers shall be exercised if an express declaration that they shall not be exercised is contained in the settlement: Provided always, that the circumstance of the settlement containing powers to effect similar purposes shall not preclude the Court from exercising any of the powers conferred by this Act, if it shall think that the powers contained in the settlement ought to be extended.

(y) This section varies 19 & 20 Vict. c. 120, s. 26.

As to what constitutes an express declaration, see *Re Williams*, W. N. 1878, p. 189.

The Court will not dispense with a consent required by the settlement to the exercise of a power. *Re Harle*, 2 H. & M. 196.

**39.** Nothing in this Act shall be construed to empower the Court to authorize any lease, sale, or other act beyond the extent to which, in the opinion of the Court, the same might have been authorized in and by the settlement by the settlor or settlors.

**40.** After the completion of any lease or sale or other act under the authority of the Court, and purporting to be in pursuance of this Act, the same shall not be invalidated on the ground that the Court was not hereby empowered to authorize the same, except that no such lease, sale, or other act shall have any effect against such person as herein mentioned whose concurrence or consent ought to be obtained, or who ought to be served

Court may exercise powers repeatedly, but may not exercise them if expressly negatived (y).

Court not to authorize any act which could not have been authorized by the settlor.

Acts of the Court in professed pursuance of this Act not to be invalidated (z).

with notice, or in respect of whom an order dispensing with such service ought to be obtained in the case where such concurrence or consent has not been obtained and such service has not been made or dispensed with.

(z) The effect of this section (varying 19 & 20 Vict. c. 120, sect. 28) is that after completion of a lease, sale, &c., no objection can be taken on the ground of informality or excess of jurisdiction (*Re Thompson*, Johns. 422; *Beioley v. Carter*, L. R., 4 Ch. A. 230), except as against persons beneficially interested whose concurrence has not been obtained. *Re Shephard*, L. R., 8 Eq. 571. Objections may be raised before completion by summons, *ib.*

Costs.

**41.** It shall be lawful for the Court, if it shall think fit, to order that all or any costs or expenses of all or any parties of and incident to any application under this Act, shall be a charge on the hereditaments which are the subject of the application, or on any other hereditaments included in the same settlement and subject to the same limitations; and the Court may also direct that such costs and expenses shall be raised by sale or mortgage of a sufficient part of such hereditaments, or out of the rents or profits thereof, such costs and expenses to be taxed as the Court shall direct.

For form of order as to costs, see Seton.

Rules and orders (a).

**42.** General rules and orders of Court for carrying into effect the purposes of this Act, and for regulating the times and form and mode of procedure, and generally the practice of the Court in respect of the matters to which this Act relates, and for regulating the fees and allowances to all officers and solicitors of the Court in

respect to such matters, shall be made [*so far as relates to proceedings in England by any three or more of the following persons, of whom the Lord Chancellor shall be one, namely, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and four other judges of the Supreme Court of Judicature to be from time to time appointed for the purpose by the Lord Chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein, and*] (b) so far as relates to proceedings in Ireland by any three or more of the following persons, of whom the Lord Chancellor of Ireland shall be one, namely, the Lord Chancellor of Ireland, the Lord Chief Justice of Ireland, the Master of the Rolls in Ireland, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, and four other judges of the superior courts in Ireland to be from time to time appointed for the purpose by the Lord Chancellor of Ireland in writing under his hand, such appointment to continue for such time as shall be specified therein, and such rules and orders may from time to time be rescinded or altered by the like authorities respectively, and all such rules and orders shall take effect as general orders of the Court.

(a) The general rules and orders issued for England under this section, and known as the Settled Estates Acts Orders, 1878, and which came into operation on the 7th of January, 1879, will be found *post*, p. 241. General rules, &c.

(b) The words in italics are repealed by sect. 29 of the Judicature (Officers) Act, 1879, without prejudice to things done or rights of parties accrued before the commencement of that Act. 42 & 43  
Vict. c. 78.

Rules and orders to be laid before Parliament.

**43.** All general rules and orders made as aforesaid shall be laid before each House of Parliament within forty days after the making thereof if Parliament is then sitting, or if not, within forty days after the commencement of the then next ensuing session, and if an address is presented to her Majesty by either House of Parliament within the next subsequent forty days on which the said House shall have sat, praying that any such rule or order may be annulled, her Majesty may thereupon by Order in Council annul the same, and the rule or order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

Concurrent jurisdiction of the Court of Chancery of the County Palatine of Lancaster.

**44.** The powers vested in the High Court of Justice by this Act may, so far as relates to estates within the County Palatine of Lancaster, be exercised also by the Court of Chancery of the said County Palatine; and general rules and orders of Court for the purposes aforesaid, so far as relates to proceedings in the said Court of the said County Palatine, shall be made by the Chancellor of the Duchy and County Palatine of Lancaster, with the advice and consent of any one or more of the persons authorized under this Act to concur in the making of general rules and orders relating to proceedings in England, and also with the advice and consent of the Vice-Chancellor of the said County Palatine.



45. It shall and may be lawful for any person who under the provisions of this Act may make an application to the Court of Chancery in Ireland for the lease or sale of a settled estate, instead of making such application to the said Court of Chancery in Ireland to apply to the Landed Estates Court, Ireland, for the purpose of having the lease or sale of such settled estate under the said last-mentioned Court; and thereupon it shall be lawful for the said Landed Estates Court, Ireland, to exercise all the powers conferred upon the Court of Chancery in Ireland in relation to leases or sales of such nature under the provisions of this Act, save that the judge in the case of a sale shall himself execute the conveyance to the purchaser under such sale, and save that such conveyance shall have the like operation and effect, and confer such indefeasible title to the purchaser as if such sale had been made and such conveyance had been executed upon an application for the sale of an incumbered estate under the Act of the twenty-first and twenty-second years of her Majesty, chapter seventy-two: Provided always, that the Landed Estates Court, Ireland, shall make such investigation of the title and circumstances of the said estates as shall appear expedient, and also in cases of sales as in other cases preliminary to sales conducted in the said Landed Estates Court, Ireland: Provided also, that every decision and order in the course of such proceedings shall be subject to appeal to the Court of Appeal in Chancery as in other cases under the said Act.

Application for lease or sale in Ireland may be made to Landed Estates Court (c).

(c) The jurisdiction of the Landed Estates Court in Ireland Ireland.

is merged in the Chancery Division of the High Court of Chancery in Ireland. See sects. 4, 36, of the Judicature (Ireland) Act, 1877, 40 & 41 Vict. c. 57.

Tenants  
for life, &c.  
may grant  
leases  
for 21  
years (d).

**46.** It shall be lawful for any person entitled to the possession (e) or to the receipt of the rents and profits of any settled estates for an estate for any life, or for a term of years determinable with any life or lives, or for any greater estate, either in his own right or in right of his wife, unless the settlement shall contain an express declaration that it shall not be lawful for such person to make such demise; and also for any person entitled to the possession or to the receipt of the rents and profits of any unsettled estates as tenant by the courtesy, or in dower, or in right of a wife who is seised in fee without any application to the Court, to demise the same or any part thereof, except the principal mansion house and the demesnes thereof, and other lands usually occupied therewith, from time to time, for any term not exceeding twenty-one years so far as relates to estates in England, and thirty-five years so far as relates to estates in Ireland, to take effect in possession at or within one year next after the making thereof; provided that every such demise be made by deed, and the best rent that can reasonably be obtained be thereby reserved, without any fine or other benefit in the nature of a fine, which rent shall be incident to the immediate reversion; and provided that such demise be not made without impeachment of waste, and do contain a covenant for payment of the rent, and such other usual and proper covenants as the lessor shall think fit, and also

a condition of re-entry on nonpayment of the rent for a period of twenty-eight days after it becomes due, or for some less period to be specified in that behalf; and provided a counterpart of every deed of lease be executed by the lessee.

(d) This section varies 19 & 20 Vict. c. 120, s. 32.

This power is entirely superseded by the more extensive powers of leasing given to tenants for life by the Settled Land Act, 1882, sect. 6, *ante*, p. 31.

(e) As to what constitutes possession or receipt of the rents and profits, see *Re Taylor*, L. R., 20 Eq. 297. See also Middleton, p. 46.

**47.** Every demise authorized by the last preceding section shall be valid against the person granting the same, and all other persons entitled to estates subsequent to the estate of such person, under or by virtue of the same settlement if the estates be settled, and in the case of unsettled estates against the wife of any husband granting such demise of estates to which he is entitled in right of such wife, and against all persons claiming through or under the wife or husband (as the case may be) of the person granting the same.

Against whom such leases shall be valid.

**48.** The execution of any lease by the lessor or lessors shall be deemed sufficient evidence that a counterpart of such lease has been duly executed by the lessee as required by this Act.

Evidence of execution of counterpart lease by lessee.

**49.** All powers given by this Act, and all applications to the Court under this Act, and consents to and notifications respecting such applications, may be executed, made, or given by, and all notices under this Act may be given to

Provision as to infants, lunatics, &c.

guardians on behalf of infants (*t*); and by or to committees on behalf of lunatics (*u*), and by or to trustees or assignees of the property of bankrupts, debtors in liquidation, or insolvents: Provided nevertheless, that in the cases of infant or lunatic tenants in tail no application to the Court or consent to or notification respecting any application may be made or given by any guardian or committee without the special direction of the Court.

#### Infants.

(*t*) As to the appointment of guardians of infants, see Orders 8 and 10, *post*, p. 243.

The consent of the infant's father is not sufficient (*Re Caddick*, 7 W. R. 334), nor the consent of his testamentary guardian. *Re James*, L. R., 5 Eq. 334.

It would appear that by the combined effect of this section and of sect. 41 of the Conveyancing Act, 1881, guardians may grant leases for twenty-one years of the infant's land under sect. 46 of this Act (*ante*, p. 234) without the sanction of the Court.

#### Lunatics.

(*u*) Consent on behalf of a lunatic not so found by inquisition may be given by a guardian appointed by the Court for that purpose. *Re Venner*, L. R., 6 Eq. 249; *Re Clough*, L. R., 15 Eq. 284; see also as to lunatics, Orders 6, 8, and 11, *post*, pp. 242, 243. The committee of a lunatic should obtain the permission of the Court in Lunacy before joining in an application. *Re Woodcock*, L. R., 3 Ch. A. 229.

A married woman applying to the Court, or consenting to be examined apart from her husband.

**50.** Where a married woman shall apply to the Court (*x*), or consent to an application to the Court, under this Act, she shall first be examined apart from her husband touching her knowledge of the nature and effect of the application (*y*), and it shall be ascertained that she freely desires to make or consent to such application; and such examination shall be made whether the hereditaments which are the subject of the application shall be settled in trust for the separate use of such married woman independently of her husband

or not; and no clause or provision in any settlement restraining anticipation shall prevent the Court from exercising, if it shall think fit, any of the powers given by this Act, and no such exercise shall occasion any forfeiture, anything in the settlement contained to the contrary notwithstanding.

(x) An affidavit of no settlement is not necessary for the purpose of obtaining an order for lease or sale under the Act, but will be required on payment out of Court of proceeds of sale. *Re Standish*, 25 W. R. 8.

As to examination of a married woman, see Orders 13 and 14, *post*, p. 243; and for forms of certificate and request, see Appendix to Orders, Forms 7—11, pp. 250, 252.

A married woman who is under age must be examined; it is not sufficient for her to consent as an infant by a special guardian. *Re Broadwood*, L. R., 7 Ch. A. 323.

(y) The examination has been dispensed with where the interest of a married woman is remote and sufficiently represented by other parties (*Re Lord de Tabley*, 11 W. R. 936), and where the Court was satisfied that the order asked for would be beneficial to all parties, and that the delay necessary for taking the examination would be prejudicial. *Re Halliday*, L. R., 12 Eq. 199; and see *Re Thorne*, 20 W. R. 587.

Examina-  
tion of  
married  
women.

Dispensing  
with exa-  
mination.

**51.** The examination of such married woman, when resident within the jurisdiction of the Court to which such application is made, shall be made either by the Court or by some solicitor duly appointed by the Court for that purpose (z), who shall certify under his hand that he has examined her apart from her husband, and is satisfied that she is aware of the nature and effect of the intended application, and that she freely desires to make or consent to the same (a). And when the married woman is resident out of the jurisdiction of the Court to which such application is made, her examination may be made by any person appointed for that purpose by the Court, whether

Examina-  
tion of  
married  
woman,  
how to be  
made when  
residing  
within the  
jurisdic-  
tion of the  
Court, and  
how when  
residing  
without  
such juris-  
diction.

he is or is not a solicitor of the Court, and such person shall certify under his hand to the effect hereinbefore provided in respect of the examination of a married woman resident within the jurisdiction. And the appointment of any such person not being a solicitor shall afford conclusive evidence that the married woman was at the time of such examination resident out of the jurisdiction of the Court.

(z) The solicitor appointed must not be the solicitor acting in the matter (*Re Brealy*, 5 W. R. 613), nor the solicitor of the husband. *Re Noyes*, 6 W. R. 7.

(a) No person connected with the husband should be present during the examination. *Re Bendyshe*, 3 Jur., N. S. 727.

As to application by or consent of married women, whether of full age or under age.

**52.** Subject to such examination as aforesaid, married women may make or consent to any applications, whether they be of full age or infants (b).

(b) A married woman who is an infant is in the same position as if she were of full age, and must be examined accordingly. See *Re Broadwood*, L. R., 7 Ch. A. 323.

No obligation to make or consent to application, &c. (c).

**53.** Nothing in this Act shall be construed to create any obligation on any person to make or consent to (d) any application to the Court or to exercise any power.

(c) This section varies 19 & 20 Vict. c. 120, s. 40.

(d) The Court will not dispense with consents required by the settlement. *Re Harle*, 2 H. & M. 196.

Tenants for life, &c. to be deemed entitled notwithstanding incumbrances.

**54.** For the purposes of this Act, a person shall be deemed to be entitled to the possession or to the receipt of the rents and profits of estates, although his estate may be charged or incumbered either by himself or by the settlor, or otherwise howsoever, to any extent; but the estates or inte-

rests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and profits as aforesaid unless they shall concur therein.

**55.** Provided always, that nothing in this Act shall authorize any sale or lease beyond the term of twenty-one years of any settled estates in respect of which, under the Act of the thirty-fourth and thirty-fifth years of King Henry the Eighth, chapter twenty, "to embar feigned recovery of lands wherein the King's Majesty is in reversion, or under any other Act of Parliament, the tenants in tail are restrained from barring or defeating their estates tail, or where the reversion is vested in the Crown.

Exception as to entails created by Act of Parliament.

**56.** Nothing in this Act shall authorize the granting of a lease of any copyhold or customary hereditaments not warranted by the custom of the manor without the consent of the lord, nor otherwise prejudice or affect the rights of any lord of a manor.

Saving rights of lords of manors.

**57.** This Act shall, except as hereinafter provided, apply to all matters existing at the time of the passing of this Act, whether proceedings are actually pending or not, and any proceedings in any such matter may be continued or taken under this Act as if the matter originated under this Act, or may be continued or taken under the Acts hereby repealed, or partly under this Act and

To what settlements this Act to extend.

partly under the said repealed Acts as occasion may require: Provided always, that the provisions in this Act contained respecting demises to be made without application to the Court shall extend only to settlements made after the 1st day of November, 1856.

Repeal of  
Acts speci-  
fied in  
schedule.

**58.** The Acts specified in the schedule to this Act are hereby repealed: Provided always, that this repeal shall not affect anything done or any proceeding taken under any enactment hereby repealed.

Saving.

**59.** Nothing in this Act shall interfere with the exercise of any powers to authorize or grant leases conferred by any Act of Parliament not expressly repealed by this Act.

Extent  
of Act.

**60.** This Act shall not extend to Scotland.

Com-  
mence-  
ment of  
Act.

**61.** This Act shall commence on the 1st day of November, 1877.

#### SCHEDULE.

Session and Chapter.	Title or Short Title.
19 & 20 Vict. c. 120 ..	An Act to facilitate leases and sales of Settled Estates.
21 & 22 Vict. c. 77 ..	An Act to amend and extend the Settled Estates Act of 1856.
27 & 28 Vict. c. 45 ..	An Act to further amend the Settled Estates Act of 1856.
37 & 38 Vict. c. 33 ..	The Leases and Sales of Settled Estates Amendment Act, 1874.
39 & 40 Vict. c. 30 ..	The Settled Estates Act, 1876.



## ORDERS UNDER "THE SETTLED ESTATES ACT, 1877."

1. The words "settlement," "settled estates," and "the Court," in these orders shall have the same interpretation as in the Act.

The words "the Act" in these orders shall mean "The Settled Estates Act, 1877"; "the petition" shall mean a petition under the Act; and "the judge" shall mean the judge of the Court with whose name the petition shall be marked, or to whom the petition shall be transferred.

2. All petitions, notices, affidavits, and other proceedings under the Act shall be entitled, "In the matter of the estates settled" [by the settlor or settlors, naming one of them, and referring to the instrument by which the settlement shall have been created, and mentioning the parish or place and county in which the lands, messuages, or tenements proposed to be dealt with are situate] "and in the matter of 'The Settled Estates Act, 1877,'" and every such petition shall be marked with the words, "In the High Court of Justice, Chancery Division," and with the title of the judge before whom it is intended to be heard. (See Form, No. 1, in the Appendix hereto.) Upon the presentation of the petition, a day shall be appointed for hearing not less (unless the judge gives special leave) than eight clear days after such presentation, and in the computation of such eight clear days, Sundays and other days on which the offices are closed shall not be reckoned; and every petition shall, in the body thereof, or in a schedule thereto, or by a plan thereto annexed, contain a detailed description of the property proposed to be dealt with by such petition sufficient to identify the same.

3. When a petition has been put into the paper for hearing, and by reason of the parties not being ready, or for any other cause, the judge allows it to stand over generally, it may be put into the paper for a subsequent day, without any application to the Court or judge, on the petitioner or his solicitor applying for that purpose to the secretary of the Lord Chancellor or Master of the Rolls (as the case may be), and notice of the appointment of such subsequent day shall be given by the petitioner or his solicitor, two clear days before the day fixed, to the other parties entitled to appear on such petition.

4. The notice required to be given by the 26th section of the Act, if given before the hearing (or if given after the hearing, and the judge shall not otherwise direct), may, without any other direction of the Court, be given within the jurisdiction of the Court, except in the case of a person of unsound mind, not so found by inquisition, by delivering to the person to be

Definitions.

S. E. Act, ss. 2, 3, pp. 203—207.

Title, &c. of petition. Ord. 31, p. 246. App. Form 1, p. 247.

Hearing.

Description of the property.

Petition may be restored to paper.

Notice under S. E. Act, s. 26.

App.  
Form 3,  
p. 248.

served a notice (in the Form, No. 3, in the Appendix hereto), with such variations as circumstances require, and the time to be specified in such notice for the person served to deliver or leave a notification shall—(a) in case the person to be served is a guardian of an infant, be such as shall be directed by the judge in the order appointing the guardian, and in case the person to be served is a married woman, or a committee of a lunatic, not less than twenty-eight clear days after the service; (b) and in other cases not less than fourteen clear days after the service. In case the person to be served is of unsound mind, not so found by inquisition, or out of the jurisdiction of the Court, or it is desired to serve such notice on any person within the jurisdiction of the Court in any other manner than above provided, an application shall be made at chambers, ex parte by the petitioner, for directions as to the manner in which such notice shall be given, and as to the time to be specified in such notice within which the notification is to be made by the person served.

App.  
Form 2,  
p. 247.

Guardian  
of infant.

5. Where it is desired that any guardian of an infant shall make or consent to any application to the Court under the Act, or make any notification respecting any application to the Court, or that notice may be given to any such guardian on behalf of an infant, the Court may appoint a guardian to such infant for the purposes of the Act, and an application for such appointment may, after the petition is presented, be made at chambers by the petitioner by summons. And if an infant is the petitioner, the petition may be presented by the infant by his next friend, and after the petition has been presented and answered, and a guardian appointed, the word "guardian" shall be substituted in the petition for the words "next friend," and the name of the guardian (if the next friend and guardian shall not be the same person) for the name of the next friend.

Commit-  
tees of  
lunatics  
and guar-  
dians of  
infants.

6. In the case of a lunatic or infant tenant in tail by his committee or guardian applying or consenting to an application, or giving a notification respecting an application, an application may be made at chambers by the petitioner after the petition is presented that such committee or guardian may be directed to so apply or consent, or give a notification, and in the case of an infant such application may be combined with the application to appoint a guardian.

7. In cases where the committees or guardians of lunatics or infant tenants in tail shall be served with notice of the application in pursuance of the 26th section of the Act, an application may be made at chambers by the petitioner, before the expiration of the time specified in such notice, that such committees or guardians may notify that they either assent to or dissent from such application, or submit their rights or interests so far as they may be affected by such application to be dealt with by the Court.

Service on  
parents  
and guar-  
dians.

8. Upon an application to appoint a guardian to an infant for any such purpose as aforesaid, the summons shall be served upon the parent, testamentary guardian, or guardian appointed by the Court of Chancery of the Chancery Division of the High

Court of Justice, of the infant, if there be any such parent or guardian, unless the Court or judge shall dispense therewith.

9. Upon any application that a committee or guardian of a lunatic or infant tenant in tail may be directed to make or consent to any application on behalf of such lunatic or infant, or to notify that the lunatic or infant assents to or dissents from such application, or submits his rights or interests so far as they are affected by such application to be dealt with by the Court, the summons shall be served on the committee of such lunatic, or the guardian appointed, or proposed to be appointed, of such infant, for such purpose.

10. Upon an application to appoint a guardian of an infant the following facts shall be proved:—

- (1) The age of the infant.
- (2) Whether he has any parent, testamentary guardian, or guardian appointed by the Court of Chancery or the Chancery Division of the High Court of Justice; and, if so, whether such parent or guardian has any interest in the application, and if he has the nature of such interest, or whether or not adverse to the interest of the infant.
- (3) Where and under whose care the infant is residing, and at whose expense he is maintained.
- (4) In what way the proposed guardian is connected with the infant, and why proposed, and how qualified to be appointed.
- (5) That the proposed guardian has no interest in the application, or if he has, the nature of his interest, and that it is not adverse to the interest of the infant.
- (6) The consent of the guardian to act.

11. Upon an application that a committee of a lunatic tenant in tail may be directed to make or consent to any application, or to give any notification, respecting any application, the authority of the judge or judges entrusted with the care and commitment of the custody of the persons and estates of lunatics to such committee to act on behalf of the lunatic shall be produced, and if it shall appear thereby that such judge or judges are of opinion that it is proper and consistent with a due regard for the interest of the lunatic that the committee shall make or consent to the application or give any specific notification respecting the application, such authority shall, unless the Court or judge shall for any special reason require further evidence, be sufficient evidence upon which the Court or judge may direct the committee to act in conformity with such authority.

12. Upon an application that a guardian of an infant tenant in tail may be directed to make or consent to any application, or to give any notification respecting any application, evidence is to be produced to satisfy the judge that it is, and the guardian is to make an affidavit that he believes that it is, proper and consistent with a due regard for the interest of such infant that such direction shall be given.

13. The examination of a married woman, under sects. 50 and

Ord. 5,  
*supra*.

Service on  
commit-  
tee, &c.

Ord. 6,  
*supra*.

Evidence  
on ap-  
pointment  
of guar-  
dian.

Evidence  
in case of  
lunatic  
tenant in  
tail.

S. E. Act,  
s. 49,  
p. 232.

Evidence  
on applica-  
tion that  
guardian  
may be  
directed to  
consent.

Examina-  
tion of

married  
women.

S. E. Act,  
ss. 50, 51,  
pp. 236,  
237.

51 of the Act, may be taken at any time after the petition is presented and answered.

14. When it is desired that a married woman resident within the jurisdiction of the Court shall be examined otherwise than by the Court, a solicitor, who is a perpetual commissioner to take acknowledgments of deeds by married women, may be appointed for that purpose by the judge at chambers, in the Form, No. 7, in the Appendix hereto, without summons or order, upon the request of the petitioner and a certificate of the solicitor for the petitioner in the Form, No. 7, in the Appendix hereto that the person to be appointed is not a solicitor for the petitioner, or for any party whose concurrence or consent to the application is required; but where an examination by such solicitor will cause unreasonable expense, delay, or inconvenience, or where the married woman is resident out of the jurisdiction of the Court, an application by summons may be made *ex parte* by the petitioner at chambers to appoint a solicitor if such woman is resident within the jurisdiction of the Court, and if not so resident, a person, whether a solicitor or not, to take such examination.

Evidence  
of propriety of  
application.

15. Upon every petition the Court shall be satisfied by sufficient evidence that it is proper and consistent with a due regard for the interests of all parties entitled under the settlement that the powers should be exercised; and it shall be stated in the affidavit why and upon what ground it is deemed to be so.

Evidence  
of service  
on trustees.

16. Upon every petition where there are any trustees seised or possessed of any estate in trust for any of the persons whose consent or concurrence to or in the application is required, evidence is to be produced that notice of the application has been served on such trustees.

Evidence  
that no  
application  
has been  
made to  
Parliament.

17. Upon every petition evidence shall be produced to satisfy the Court that neither the applicant nor any party entitled has previously applied to either house of parliament for a private Act to effect the same or a similar object, or if any such application has been made that the same was not rejected on its merits or reported against by the judges to whom the bill may have been referred.

Notices  
and advertisements.  
S. E. Act,  
ss. 26, 27,  
31, pp. 221,  
222, 224.

18. If upon the hearing of any petition the Court shall be of opinion that notice ought to be served on any person who shall not have been served, or that notice of the application ought to be inserted in any newspaper, the Court shall give directions accordingly, and the petition shall stand over generally, or to such time as the Court shall direct.

Leave to  
be heard.

19. When the Court shall at the hearing have directed notice of any application to be inserted in any newspapers, any person may, within the time specified in the notice, apply to the Court by motion, either *ex parte* or upon notice to the petitioner, for leave to be heard in opposition to or in support of the application, but if such motion shall be made *ex parte* and the Court shall think fit to give such leave, it shall be subject to such order as the Court shall think fit to make as to costs.

Inspection  
and ob-

20. Any such person having obtained leave under the last preceding order shall be at liberty, upon reasonable notice,

to inspect and peruse the petition at the office of the solicitor for the petitioner, upon payment of a fee of 13s. 4d. on each inspection, and shall be entitled (either without or after such inspection) to be furnished with a copy of such petition upon such application, terms and conditions as are provided by Rules 8, 9, 12 and 13 of Order V. of the Additional Rules of Court, under "The Supreme Court of Judicature Act, 1875," dated 12th August, 1875.

21. Any order made on an *ex parte* motion giving leave to such person to be heard on any application shall be served on the solicitor for the petitioner.

22. Any person served with a notice, pursuant to the 26th section of the Act, requiring him to notify whether he assents to or dissents from the application or submits his rights or interests, so far as they may be affected by such application, to be dealt with by the Court, and any trustee or other person served with notice, pursuant to the 30th section of the Act, shall be at liberty, upon reasonable notice to the petitioner's solicitor, to inspect and peruse the petition without payment of any fee, and he shall be entitled to be furnished with a copy thereof upon such application, terms, and conditions as are provided by Rules 8, 9, 12 and 13 of Order V. of the Additional Rules of Court under "The Supreme Court of Judicature Act, 1875," dated 12th August, 1875.

23. In all cases in which land in a register county or district is affected by the exercise of any powers conferred on the Court by the Act, and the Court shall direct notice to be recorded, pursuant to the 33rd section of the Act, such notice may be given by directing a memorial of the order to be registered. And in all cases in which the Court shall not think it practicable or expedient that notice under the said section should be recorded as therein mentioned, the order shall state that no record of the order need be made.

24. Every order shall state, in addition to the names of the petitioners, the names of the persons other than the petitioners who concur or consent or to whom notice of the application has been given, or who (under Ord. 19) may have obtained leave to be heard in opposition to or in support of the application, and whether any notification was received from the persons to whom notice has been given, and if any has been received the purport thereof, and also the names of the persons, if any, notice to whom has been dispensed with, and whether the order is made subject to any and what rights, estate, or interest of any person whose concurrence or consent has been refused, or who shall not or shall not be deemed to have submitted his rights or interests to be dealt with by the Court, or whose rights or interests ought, in the opinion of the Court, to be excepted.

25. In cases where the Court authorizes a lease, the order shall direct that the lease shall contain such conditions as are required by the Act, and such other covenants, conditions, and stipulations as the Court shall deem expedient with reference to the special circumstances, or may direct the same to contain such covenants, conditions, and stipulations as may be ap-

taining  
copies of  
petitions.

Jud. Act,  
1875,  
Ord. V.  
rr. 8, 9, 12,  
13.

Service of  
*ex parte*  
order.

Trustees,  
&c. entitled to  
inspect and  
obtain  
copies of  
petitions.

Notice  
to be re-  
corded.

Order.

Condi-  
tions, &c.  
of leases.

- proved by the judge at chambers without directing the lease to be settled by the judge.
- Time.** 26. The rules 1, 2, 3, and 6, of Ord. LVII. (as to time) in the schedule to "The Supreme Court of Judicature Act, 1875," shall be applicable to these orders and to all proceedings under the Act.
- Jud. Act, 1875, Ord. LVII.** 27. The forms set forth in the appendix hereto shall be adhered to, subject only to such variations as may be necessary to meet the circumstances of the case or direction of the Court.
- rr. 1, 2, 3, 6.** 28. In all cases not provided for by the Act, or these orders, the existing forms and mode of procedure and general practice of the Court on similar proceedings shall apply to proceedings under the Act.
- Forms.** 29. The fees and allowances to solicitors of the Court in respect to proceedings under the Act, shall be such as are provided by Ord. VI. of the Additional Rules of Court under "The Supreme Court of Judicature Act, 1875," dated 12th August, 1875, and are applicable to such proceedings; and solicitors shall be entitled to charge and be allowed for a request and certificate under the 14th order (of these orders), and for attendances at the judges' chambers, to procure the appointment of an examiner thereon, a fee of 13s. 4d., if the lower scale of fees is applicable, and 17. 1s. in other cases.
- Saving of existing procedure.** 30. The fees to be taken by the officers of the Court in respect to proceedings under the Act, shall be such as are provided by the orders under "The Supreme Court of Judicature Act, 1875," dated 28th October, 1875, and are applicable to such proceedings; and every request under the 14th order (of these orders) shall bear a stamp of 2s., if the lower scale of fees is applicable, and 3s. in other cases.
- Fees.** 31. Every petition under the Act shall set forth the name, address, and description of the petitioner, and also a place within three miles from the site of Temple Bar, London, where he may be served with any order of the Court or of the judge in chambers, or notice relating to the subject of such petition.
- Stamps.** 32. The judge in person sitting in Court or in chambers, in the case of any petition, may by special order dispense with all or any of the preceding orders, so far as they are applicable to such petition, in any case in which he shall think fit, and upon such terms and conditions (if any) as he may deem proper.
- Petition to set forth name, &c., of petitioner.** 33. These orders shall come into operation on the 7th day of January, 1879, and shall apply to any petition presented on or after that date.
- Judge may dispense with orders.** 34. These orders may be cited as "The Settled Estates Act Orders, 1878."
- Date of operation.**
- Short title.**

CAIRNS, C.  
G. JESSEL, M. R.  
RICHARD MALINS, V.-C.  
JAMES BACON, V.-C.  
CHARLES HALL, V.-C.  
EDWARD FREY.

*December, 1878.*

## APPENDIX.

---

### No. 1.—*Form of Title of Petition and other Proceedings.*

In the High Court of Justice.  
Chancery Division.

The Master of the Rolls  
[or the Vice-Chancellor Malins,  
or other Vice-Chancellor].

In the matter of estates settled by *A. B.* [or *A. B. and others*], by will dated [or deed dated ], consisting of certain lands [or messuages or tenements] in , in the parish of , in the county of

And in the matter of "The Settled Estates Act, 1877."

1. Title of petition and other proceedings.

---

### No. 2.—*Form of Summons for Directions as to Service of Notice pursuant to the 26th Section of the Act.*

(*Title same as Petition.*)

Let all parties concerned attend at my chambers at , on , at o'clock, on the hearing of an application on the part of [*the petitioners*], that notice of the application intended to be made by a petition presented in the above matters on the day of , requiring *A. B. and C. D.* severally to notify whether he assents to or dissents from such application, or submits his rights and interests, so far as they may be affected by such application, to be dealt with by the Court, may be given by [*state the matter in which it is proposed to give the notice, and the time within which the notification is to be required*], or in such other manner as the judge may think fit.

Dated this day of ,  
This summons was taken out by , of , solicitors for the applicant.

2. Summons for directions as to service of notice.

3. Notice  
pursuant  
to sect. 26.

No. 3.—*Form of Notice pursuant to Sect. 26 of the Act.*

In the High Court of Justice.

Chancery Division.

The Master of the Rolls

[or the Vice-Chancellor Malins,  
or other Vice-Chancellor].

(Title same as Petition.)

Take notice that [name petitioners and their addresses, as in petition] have presented a petition in the above matters, praying that [as in petition, but describing the lands, messuages, or tenements, as in the petition], and it is intended to apply to the said Court for an order in accordance with such prayer, and you are [severally] hereby required to notify in writing within after the service hereof, whether you assent to, or dissent from, such application, or submit your rights or interests, so far as they may be affected by such application, to be dealt with by the Court; such notification is to be delivered to the petitioner's solicitors, or left for them at the address specified at the foot hereof, and may be so delivered by transmitting the same to them by post at such address.

If no notification shall be so delivered or left within the time above limited, you will be deemed to have submitted your rights and interests to be dealt with by the Court.

In the event of your dissenting from such application, and desiring to be heard in opposition to the application, you are by your notification to require notice to be given to, or left for, you or your solicitor, at a place to be specified within three miles from the site of Temple Bar, London, of the day on which the petition is fixed for hearing.

You or your solicitor can, upon reasonable notice to the undernamed A. and B., inspect and peruse the petition without payment of any fee, and you are entitled at your own expense to have a copy of such petition furnished to you.

Dated the            day of

A. and B.,

[Address within three miles of the site of Temple Bar, London]

Petitioners' solicitors.

To [name the person or all persons to be served pursuant to the above section.

NOTE.—A copy of the above notice, with a notification at the foot thereof to be filled up by you, is sent herewith.

4. Form to  
accompany  
preceding  
notice.

No. 4.—*Form to accompany Notice pursuant to Sect. 26 of the Act.*

Copy notice.

In pursuance of a notice, of which the above is a copy, served on me on the            day of           , I hereby notify that I\*

Dated this            day of

To Messrs.            .†

\*Here insert "assent to the application," or "dissent from



the application," or "submit my rights and interests, so far as they may be affected by the application, to be dealt with by the Court." And if you dissent and desire to be heard in opposition thereto, add "and I desire to be heard in opposition to the application, and require notice to be given to , at [naming a place within three miles of the site of Temple Bar, London,] of the day fixed for the hearing of the petition."

† Signature and address.

**No. 5.—Form of Summons for Appointment of a Guardian of an Infant, and for leave for the Guardian to make or consent to an Application.**

(Title same as Petition.)

Let all parties concerned attend at my chambers at , on , at o'clock, on the hearing of an application on the part of [the petitioners].

That *A. B.*, or some other proper person, may be appointed guardian of *C. D.*, an infant, and that *E. F.*, or some other proper person, may be appointed guardian of *G. H.*, an infant, for the purpose of making on behalf of such infants (or consenting on behalf of such infants), an application proposed to be made by a petition presented on the day of , by the above-named applicants for an order in accordance with the prayer of such petition, and (in case the infants are tenants in tail) that such guardians may be directed to make (or consent to) such application.

Dated this day of .

This summons was taken out by , of , solicitors for the applicants.

5. Summons for appointment of guardian of infant, and for leave to consent, &c.

**No. 6.—Form of Summons for Appointment of a Guardian of an Infant to be served with Notice of an Application, and for leave for the Guardian to deliver a Notification pursuant to such Notice.**

(Title same as Petition.)

Let all parties concerned attend at my chambers at , on , at o'clock, on the hearing of an application on the part of [the petitioners].

That *A. B.*, or some other proper person, may be appointed guardian of *C. D.*, an infant, and that *E. F.*, or some other proper person, may be appointed guardian of *G. H.*, an infant, for the purpose of being served with a notice requiring them on behalf of such infants, within clear days after service thereof, to notify whether they assent to or dissent from an application proposed to be made by a petition presented on the day of , by the above-named applicants, for an order in accordance with the prayer of such petition, or submit the infants' rights or interests, so far as they may be affected

6. Summons for appointment of guardian of infant to be served, &c.

by such application, to be dealt with by the Court, and (in case the infants are tenants in tail), that such guardians may be directed to notify that they, on behalf of such infants, assent to (or dissent from) such application (or submit the infants' rights or interests, so far as they may be affected by such application, to be dealt with by the Court).

Dated this            day of            .

This summons was taken out by            , of            , solicitors for the applicants.

7. Request to appoint persons to examine a married woman.

**No. 7.—Form of Request to appoint a Person to examine a Married Woman.**

(Title same as Petition).

The petitioners            , in a petition presented in these matters on the            day of            , request that *A. B.* of, &c. [*C. D.* of, &c., and *E. F.* of, &c.], being a solicitor [or solicitors], and a perpetual commissioner [or perpetual commissioners] to take the acknowledgment of deeds by married women, may be appointed for the purpose of any or either of them examining the petitioners, *G.* the wife of *H. I.*, and *K.* the wife of *L. M.*, and *N.* the wife of *O. P.*, of, &c., respectively, touching their knowledge of the nature and effect of the application intended to be made by the petition, and to ascertain whether they, the said *G. I.* and *K. M.* respectively, freely desire to make such application, and whether she, the said *N. P.*, freely desires to consent to such application. We, the solicitors for the petitioners, hereby certify that neither of them, the said *A. B.*, *C. D.*, and *E. F.*, is the solicitor for the petitioner, or for any party whose concurrence or consent to the application is required.

Dated this            day of            .

*A. & B.*, solicitors for the petitioners.

Address

The Master of the Rolls [or the Vice-Chancellor            ] appoints the said            , for the purposes mentioned in the above request.

*E. F.*, Chief Clerk.

8. Summons to appoint persons to examine.

**No. 8.—Form of Summons to appoint Persons to examine Married Women.**

Let all parties concerned attend at my chambers at            , on            , at            o'clock, on the hearing of an application on the part of            , the petitioners in a petition presented in this matter on the            day of            , that *A. B.*, of, &c., and *C. D.*, of, &c., [and if the married women are within the jurisdiction, add being solicitors] be appointed for the purpose of any or either of them examining the petitioners, *G.* the wife of *H. I.*, and *K.* the wife of *L. M.*, and *N.* the wife of *O. P.*, of, &c., respectively, touching their knowledge of the nature and effect of the application intended

to be made by the said petition, and to ascertain whether they, the said *G. I.* and *K. M.*, freely desire to make such application, and whether she, the said *N. P.*, freely desires to consent to such application.

Dated this            day of

This summons was taken out by \_\_\_\_\_, of \_\_\_\_\_, solicitors for the applicant.

No. 9.—*Form of Examination of a Married Woman making or assenting to an Application.*

**9. Exami-  
nation of a  
married  
woman.**

(Title same as Petition.)

The examination of the petitioner *G.* the wife of *H. J.*, and *K.* the wife of *L. M.*, and of *N.* the wife of *O. P.*, of\*

We, the said *G. J., K. M., and N. P.*, having been this day respectively examined apart from our respective husbands touching our knowledge of the nature and effect of an application intended to be made to the High Court of Justice by a petition presented in this matter on the \_\_\_\_\_ day of \_\_\_\_\_, by us the said *G. J., and K. M.*, and others, for answer thereto severally say that we are aware of the nature and effect of the said intended application, and we the said *G. J., and K. M.*, severally freely desire to make such application, and I, the said *N. P.*, freely desire to consent to such application. As witness our hands this \_\_\_\_\_ day of \_\_\_\_\_.

Witness to the signature of the  
said G. J., K. M., and N. P.  
Q. R.,  
Address.

\* Insert the names of all who can be conveniently examined by the same person and at the same time.

[To be at the Foot of the above Examination.]

No. 10.—*Form of Certificate of Examination of Married Women making or assenting to an Application.*

10. Certificate of examination.

I, the undersigned *A. B.*, being the person appointed by the Master of the Rolls [or the Vice-Chancellor], for the purpose of examining the above-named *G.*, the wife of *H. I.*, *K.* the wife of *L. M.*, and *N.* the wife of *O. P.*, hereby certify that I have this day of \_\_\_\_\_, examined the said *G. I.*, *K. M.*, and *N. P.*, apart from their respective husbands, touching their knowledge of the nature and effect of the application intended to be made by the petition above referred to, and I have taken such examination in writing as above set forth, and I further certify that at the time of such examination I explained to them the nature and effect of the said application, and I am satisfied that they were aware of the nature and effect of such application, and that they the said *G. I.* and *K. M.* freely desire to make the said application, and that the said *N. P.* freely desires to consent to the said application.

11. Affidavit verifying examination.

No. 11.—*Form of Affidavit verifying Examination.*

(Title as in Petition.)

I, *Q. R.*, of \_\_\_\_\_, make oath and say that I was present and did see *G. J.*, *K. M.*, and *N. P.*, respectively named in the above petition, sign the examination or paper writing annexed hereto, and now produced and shown to me marked "A," and that the signatures, *G. J.*, *K. M.*; and *N. P.*, attached thereto are respectively the proper handwritings of *G.* the wife of *H. J.*, of \_\_\_\_\_; *K.* the wife of *L. M.*, of \_\_\_\_\_; and *N.* the wife of *O. P.*, of \_\_\_\_\_. And I further say that I was present and did see *A. B.* sign the certificate or paper writing annexed hereto, and now produced and shown to me marked "B," and that the signature *A. B.* attached thereto is the proper handwriting of *A. B.*, of, &c. And I say that the signature *Q. R.* attached to the said paper writings as a witness is my handwriting.

---

12. Notice pursuant to sect. 30.

No. 12.—*Form of Notice pursuant to the 30th Section of the Act.*

(Title same as Petition.)

In the High Court of Justice.

Chancery Division.

Master of the Rolls

[or the Vice-Chancellor Malins,  
or other Vice-Chancellor].

Take notice that [name petitioners and their addresses, as in petition] have presented a petition in the above matters praying that [as in petition, but describing the lands, messuages, or tenements as in the petition], and it is intended to apply to the said Court for an order in accordance with such prayer. This notice is given to you in pursuance of the above Act, because you are seised or possessed of an estate in trust for \_\_\_\_\_, whose consent or concurrence to or in the application is required by the Act. You or your solicitors can, upon reasonable notice to the under-named *A.* and *B.*, inspect and peruse the petition at the address specified at the foot hereof without payment of any fee, and you are entitled at your expense to have a copy of such petition furnished to you.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

*A. & B.*,

Address,

Solicitors for the Petitioners.

To [name the persons to be served pursuant to the above section.]

---

No. 13.—*Form of Notice to be inserted in Newspapers if directed pursuant to the 31st Section.*

13. Notice to be inserted in newspapers.

(*Title as in Petition.*)

By direction of the Master of the Rolls [*or the Vice-Chancellor*], notice is hereby given that an application by petition has been made to the Court of the said judge for a sale or for powers to grant leases of the above-mentioned hereditaments [*or otherwise, according to the circumstances*], and the Court has directed the application to be adjourned [*or adjourned till*], and any person, whether interested in the estate or not, may, on or before , apply to the said Court by motion for leave to be heard in opposition to or in support of such application. The petition may be inspected on application to Messrs. A. and B., of , the solicitors for the petitioners.

## PART II.

## CONVEYANCING PRECEDENTS.

## Section I.—Settlements by Deed and Will.

**Marriage  
Settle-  
ment.  
Statutory  
Form.**

---

I. **MARRIAGE SETTLEMENT** (*Statutory Form (a)*) of land to the use of the HUSBAND for LIFE, with remainder, subject to an annuity to the wife for her JOINTURE, and to TERMS to secure PORTIONS to the first and other SONS of the marriage successively in TAIL MALE; with remainder to the use of ALL the DAUGHTERS as TENANTS in COMMON in TAIL with CROSS-REMAINDERS.

**Parties.**

THIS INDENTURE, made the            day of 1882, BETWEEN *John M.* of [*&c.*] of the first part, *Jane S.* of [*&c.*] of the second part, and *X.* of [*&c.*] and *Y.* of [*&c.*] of the third part: WITNESSETH that in consideration of the intended marriage between *John M.* and *Jane S.*, *John M.* as settlor hereby conveys to *X.* and *Y.* ALL that [*&c.*], To HOLD to *X.* and *Y.* in fee simple TO THE USE of *John M.* in fee simple until the marriage, and after the marriage TO THE USE of *John M.* during his life without impeachment of waste, with remainder after his death TO THE USE that *Jane S.* if she survives him may receive during the rest of her life a yearly jointure rentcharge of £

**Wit-  
nesseth.**

**Habendum  
to trustees  
to use of  
husband  
till  
marriage,  
and after-  
wards to  
use of hus-  
band for  
life.**

**Remainder  
to use that.**

(a) This form of settlement is given in Schedule IV. to the Conveyancing and Law of Property Act, 1881.

to commence from his death and to be paid by equal half-yearly payments, the first thereof to be made at the end of six calendar months from his death if she is then living, or if not a proportional part to be paid at her death (b) ; And subject to the

**Marriage Settlement (Statutory Form).**

Wife may receive a jointure.

(b) It was formerly usual to insert in settlements powers of distress and entry in default of payment of the jointure, and to limit a term to trustees for securing the same, but this is now unnecessary, as the remedies referred to are now incident to all rentcharges under sect. 44 of the Conveyancing Act, 1881 (44 & 45 Vict. c. 41).

**"X.—RENTCHARGES AND OTHER ANNUAL SUMS.**

"44.—(1) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rent charge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to the annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

Remedies for recovery of annual sums charged on land.

"(2) If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid.

"(3) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged, or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by nonpayment of the annual sum, are fully paid ; and such possession when taken shall be without impeachment of waste.

"(4) In the like case the person entitled to the annual charge, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on

**Marriage  
Settle-  
ment  
(Statutory  
Form).**

Remainder  
to use of  
trustees for  
a term.

Remainder  
to use of  
first and  
other sons  
in tail, &c.

Remainder  
to use of  
husband  
in fee.

before-mentioned rentcharge TO THE USE of *X.* and *Y.* for a term of five hundred years without impeachment of waste, on the trusts hereinafter declared, And subject thereto to the use of the first and other sons of *John M.* and *Jane S.* successively, according to seniority in tail male, with remainder [*insert here, if thought advisable, to the use of the same first and other sons successively, according to seniority in tail, with remainder*] TO THE USE of all the daughters of *John M.* and *Jane S.* in equal shares as tenants in common in tail, with cross-remainders between them in tail, With remainder to the use of *John M.* in fee simple [*insert trusts of term of 500 years for raising portions (c) ; also, if required, power to charge jointure and portions on a future marriage ; also, powers of sale, exchange and partition, and other powers (d) and provisions, if and as desired.*]

**IN WITNESS, &c.**

trust, by mortgage, or sale, or demise, for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by nonpayment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised, or of the income received, under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

“(5) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

“(6) This section applies only where that instrument comes into operation after the commencement of this Act.”

(c) For form of trusts of term to secure portions, see *post*, p. 260.

(d) Powers of sale, exchange, and partition are now given



II. SETTLEMENT on MARRIAGE of FREEHOLDS and COPYHOLDS of INHERITANCE; CONVEYANCE by the intended HUSBAND of FREEHOLDS to TRUSTEES for 99 years to secure PIN-MONEY to the intended WIFE, and subject thereto to the use of the HUSBAND for LIFE, with remainder to the use that the WIFE may receive a JOINTURE, and subject thereto to TRUSTEES for 500 years to secure PORTIONS for YOUNGER CHILDREN, with remainder to the use of the first and other SONS of the marriage successively in TAIL MALE, remainder to the HUSBAND in FEE; TRUSTS of TERMS for securing PIN-MONEY and PORTIONS; POWERS of JOINTURING and CHARGING PORTIONS; LARGER than statutory POWERS of LEASING, SALE, &c.; TRUSTS of COPYHOLDS to correspond with USES of FREEHOLDS; SETTLEMENT of CHATTELS as HEIRLOOMS.

Marriage  
Settle-  
ment of  
Freeholds,  
Copy-  
holds, &c.

THIS INDENTURE, made the                      day of                      , Parties.  
BETWEEN A. B. of &c. [*intended husband*] of the  
first part, C. D. of &c. [*intended wife*] of the second  
part, and E. F. of &c., G. H. of &c. and J. K. of &c.  
[*trustees*] (e) of the third part: WITNESSETH that  
in consideration of the intended marriage between

Wit-  
nesseth.

by the Settled Land Act, 1882, ss. 3, 4, *ante*, pp. 27, 29, and the insertion in settlements of clauses giving such powers to trustees will not generally be necessary. Other provisions to meet various requirements will be found in the following precedents of settlements and in the general forms. As to the insertion of covenants for title in settlements of real property, see note (n), *post*, p. 271.

(e) It was formerly the practice in real property settlements to have several sets of trustees, viz., trustees for the general purposes of the settlement, to whom were given powers of sale, exchange, &c., and separate trustees of each term, limited by the settlement for the purpose of securing pin-money, jointure or portions, the object being to prevent the possibility of the several terms merging into each other, or into the estate in fee

**Marriage  
Settle-  
ment of  
Freeholds,  
Copy-  
holds, &c.**

**Grant of  
freehold  
parcels.**

**Habendum  
to trustees  
to use of  
husband  
till mar-  
riage, and  
afterwards  
to use of  
trustees for  
99 years  
to secure  
pin-  
money.**

*A. B.* and *C. D.*, *A. B.* as settlor hereby grants and conveys unto *E. F.*, *G. H.*, and *J. K.* ALL THAT mansion known as                      Hall, together with the outbuildings, gardens, pleasure grounds, park, and demesne and other lands usually occupied therewith, AND ALL and singular the manors or reputed manors, messuages and other buildings, farms, lands, and hereditaments, corporeal and incorporeal, described in the first schedule hereunder written, AND ALSO all other (if any) the freehold hereditaments of every description of *A. B.* situate in or arising out of the respective parishes of                      and                      in the county of                      , To HOLD the premises hereinbefore expressed to be conveyed to *E. F.*, *G. H.* and *J. K.* in fee simple To THE USE of *A. B.* in fee simple until the marriage, and after the solemnization thereof To THE USE of *E. F.*, *G. H.* and *J. K.* for the term of 99 years thereafter without impeachment of waste, upon the trusts and with and subject to the powers, provisions, and declarations hereinafter contained concerning the same(f);

limited to the general trustees. Now, however, by the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 4, there is no merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity. There is, therefore, no need to appoint more than a single set of trustees for all purposes of the settlement. It is advisable, however, to appoint not less than three trustees of a settlement, as otherwise, by the death or retirement of one, the number is at once reduced below that required by the Settled Land Act, 1882, to receive notice of the intended exercise by a tenant for life of his powers, or to receive and give discharges for capital money arising under the Act.

(f) A term is inserted in this precedent to secure pin-money, inasmuch as it seems doubtful whether pin-money can be regarded as strictly an annual sum charged on the land within the meaning of the Conveyancing, &c. Act, 1881 (44 & 45 Vict. c. 41), s. 44. An account for pin-money can only be carried back one year. (*Aston v. Aston*, 1 Ves. sen. 267; *Peacock v. Monk*, 2 Ves. sen. 190.) See on this point note (d) in *Dav. Conv.* vol. iii. pt. i. p. 73.

And subject thereto TO THE USE of *A. B.* for his life without impeachment of waste, with remainder after his death TO THE USE that *C. D.* (if she shall survive him) may receive during her life the yearly rentcharge of £        for her jointure and in bar of dower and freebench, to be charged upon the premises hereinbefore conveyed, payable by equal quarterly payments on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year (*g*), without any deduction (*h*), the first of such quarterly payments to be made on such of the said days as shall first happen after the death of *A. B.*, and in proportion to the period which shall then have elapsed, if *C. D.* shall then be living, or if not a proportioned part to be paid at her death, And subject as aforesaid TO THE USE of *E. F.*, *G. H.* and *J. K.* for the term of 500 years from the death of *A. B.* without impeachment of waste, Upon the trusts and with and subject to the powers, provisions, and declarations hereinafter contained concerning the same; And subject as aforesaid TO THE USE of the first and other sons of *A. B.* successively according to seniority in tail male, with remainder TO THE USE OF *A. B.* in fee simple. AND IT IS HEREBY DECLARED that *E. F.*, *G. H.* and

**Marriage Settlement of Freeholds, Copyholds, &c.**

Remainder to use of husband for life.

Remainder to use that wife shall receive a jointure.

Remainder to use of trustees for 500 years.

Remainder to use of first and other sons of the marriage in tail male.

Remainder

(*g*) A power of distress and entry incident to a rentcharge does not arise until the next rent day after the day fixed for payment of the rentcharge; it, therefore, seems advisable to appoint for payment of the rentcharge the usual quarterly rent days. See *Hasluck v. Pedley*, L. R., 19 Eq. 271.

(*h*) The husband being the settlor, the jointure is not chargeable with succession duty. See *Dav. Conv.* vol. iii. pt. i. p. 312.

By 22 & 23 Vict. c. 35, s. 10, the release of part of land charged with a rentcharge may be released therefrom without extinguishing the rentcharge.

**Marriage  
Settle-  
ment of  
Freeholds,  
Copy-  
holds, &c.**

to use of  
husband in  
fee.

Appoint-  
ment of  
trustees for  
purposes of  
Settled  
Land Act,  
1882.

Trusts of  
term of 99  
years for  
raising  
pin-  
money.

Trust of  
term of 500  
years for  
raising  
portions.

*J. K.*, and the survivors and survivor of them, and the executors or administrators of such survivor, their or his assigns, or other the trustees or trustee for the time being of these presents (who are hereinafter referred to as the said trustees or trustee) shall be the trustees of these presents for the purposes of the Settled Land Act, 1882. AND IT IS HEREBY DECLARED that the premises are hereby limited to the use of *E. F.*, *G. H.* and *J. K.* for the said term of 99 years upon trust that the said trustees or trustee do and shall during the joint lives of *A. B.* and *C. D.* out of the rents and profits of the premises, raise the clear yearly sum of £ , and pay the same to *C. D.* for her sole and separate use, without power of anticipation, by way of pin-money, such yearly sum to be considered as commencing from the solemnization of the intended marriage, and accruing from day to day, but payable quarterly by equal payments, the first of such payments to be made at the end of three calendar months after the solemnization of the marriage, if *C. D.* shall then be living, and also do and shall raise and pay all such monies as shall be required to defray the costs and expenses incurred in performing any of the trusts of the said term or otherwise in relation thereto, and do and shall permit *A. B.* to receive the residue of the rent and profits of the premises for his own use. AND IT IS HEREBY DECLARED that the premises are hereby limited to the use of *E. F.*, *G. H.* and *J. K.* for the said term of 500 years, Upon trust that if there shall be any child or children of the marriage (other than an eldest or only son, or

any other son or sons, who, before his or their respectively attaining the age of twenty-one years, shall become entitled under these presents to the premises for the first estate in tail male) who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, then the said trustees or trustee do and shall after the death of *A. B.*, or in his lifetime with his consent in writing, by mortgage of the premises comprised in the said term of 500 years, or by any other reasonable means, raise for the portion or portions of such child or children as aforesaid (other than any son so entitled as aforesaid) such sum of money as is hereinafter mentioned, (that is to say) If there shall be but one such child (other than as aforesaid) the sum of £        to be paid to such child, being a son, on attaining twenty-one years, and being a daughter on attaining that age or marriage, which shall first happen, if the same shall happen after the death of *A. B.*, and if the same shall happen in his life, then immediately after his death; AND IF there shall be but two such children (other than as aforesaid) the sum of £       , AND IF there shall be three or more such children (other than as aforesaid) the sum of £       , the said sum of £       , £       , or £       , as the event may happen, to be paid to all or such one or more exclusively of the other or others of the children for whom the same is hereby provided as aforesaid, at such age, (not previous as to a son to his attaining the age of twenty-one years, or as to a daughter to her attaining that age or marrying,) if more than one,

Marriage  
Settle-  
ment of  
Freeholds,  
Copy-  
holds, &c.

---

**Marriage  
Settle-  
ment of  
Freeholds,  
Copy-  
holds, &c.**

**Hotchpot  
clause.**

**Trusts for  
mainte-  
nance.**

in such shares, and with such future, executory, or other trusts for the benefit of the said children or any of them, with such provisions for their or any of their maintenance, education, and advancement upon such conditions, and in such manner as *A. B.* shall, by deed or by will or codicil appoint; AND in default of such appointment, and so far as no such appointment shall extend, to be divided between the children for whose portions the same shall be raised as aforesaid, in equal shares, to be paid to them respectively, being a son or sons, on attaining twenty-one years, and being a daughter or daughters on attaining that age or marriage, if the same respectively shall happen after the death of *A. B.*, but if the same respectively shall happen during his life, then immediately after his death: PROVIDED ALWAYS, that, in default of appointment to the contrary, no child taking any part of the said sum of £       , or £        (as the case may be) by virtue of an appointment made under the power hereinbefore contained, shall be entitled to participate in the unappointed part of the same sum without bringing the part appointed to him or her into hotchpot: AND IT IS HEREBY further agreed and declared that the said trustees or trustee do and shall, after the death of *A. B.*, out of the rents and profits of the premises comprised in the said term of 500 years, or any part or parts thereof, raise for the maintenance and education of the child or children of the intended marriage for whom a portion or portions is or are intended to be hereby provided, such yearly sum or sums (not exceeding what the interest of the then expectant or

presumptive portion or portions intended to be hereby provided for such child or children would amount to at the rate of £4 per cent. per annum) as *A. B.* shall by deed, will, or codicil appoint, and in default of appointment and so far as no such appointment shall extend as the said trustees or trustee shall think fit, and do and shall apply the yearly sum or sums so raised accordingly: PROVIDED that the said trustees or trustee may either themselves or himself so pay and apply the same or may pay the same to the guardian or guardians of such child for the purposes aforesaid, without seeing to the application thereof: AND upon further trust that the said trustees or trustee do and shall, after the death of *A. B.*, or in his lifetime with his consent in writing, raise by the ways and means aforesaid for the advancement of any son or sons (other than an eldest or only son or other son or sons so becoming entitled as aforesaid) any sum or sums of money not exceeding in the whole for any such son or sons one moiety of his, or their then expectant or presumptive portion or portions, and which sum or sums shall be considered as part of the portion or portions provided for such son or sons, and do and shall pay and apply the same for his, or their preferment, advancement, or benefit, in such manner as *A. B.* shall direct, or, after his death, as the said trustees or trustee shall in their or his discretion think fit: PROVIDED ALWAYS, that it shall be lawful for *A. B.* by deed to require the trustees or trustee at any time or times, to raise, by the ways and means aforesaid, the whole or any part or parts of the portion or portions to which, by appoint-

**Marriage  
Settle-  
ment of  
Freeholds,  
Copy-  
holds, &c.**

---

**Advance-  
ment  
clause.**

**Power for  
the hus-  
band to  
require  
portions to  
be raised in  
his life-  
time.**

**Marriage  
Settle-  
ment of  
Freeholds,  
Copy-  
holds, &c.**

ment or otherwise, any child or children of the intended marriage shall for the time being be entitled for a vested interest or vested interests, and to pay such portion or portions, or the part or parts thereof required to be raised as aforesaid, to the child or children entitled thereto, or to any person or persons claiming through or in right of such child or children; and that the said trustees or trustee do and shall in all respects comply with every such request, and every such deed shall, if there shall be two or more children of the intended marriage (other than as aforesaid), and if it shall in other respects be necessary, operate as an execution of the power of appointment between or among such children hereinbefore given to *A. B.*: PROVIDED ALSO, that in case of *A. B.* so as aforesaid requiring the whole or any part or parts of any portion or portions to be raised, it shall be lawful for the said trustees or trustee, instead of actually raising the same, to assign or demise the premises, or any part or parts thereof, to the person or persons to whom the same shall be directed to be paid, or as he, she, or they shall direct, by way of mortgage for securing the sum or sums required to be raised, with interest for the same at such rate as shall be in such assignment or demise mentioned: PROVIDED ALWAYS, that, if it shall be desired, during the lifetime of *A. B.*, to raise any sum of money under the trusts hereinbefore declared of the term of 500 years, by mortgage of all or any part of the premises comprised in the same term, then and in every such case it shall be lawful for the said trustees or trustee by deed to appoint the premises

Power for trustees to create specific securities instead of raising portions.

Power for trustees to limit a term, to take effect in the life of the husband, to secure portions raised in his lifetime.



which shall be so mortgaged under the trusts of the said term of 500 years, for the term of 99 years, to commence from the execution of the deed by which this present power shall be exercised, if *A. B.* shall so long live, without impeachment of waste, and *A. B.* shall, as between himself and the persons entitled in remainder (but without prejudice to the rights of the mortgagee or mortgagees) be bound to keep down the interest accruing during his life upon any money so raised in his lifetime: PROVIDED ALWAYS, that, subject to the trusts hereinbefore declared, and to the right of the said trustees or trustee by the ways and means aforesaid, to raise and reimburse themselves or himself all costs and expenses incurred in relation to the trusts aforesaid, the rents and profits of the premises comprised in the term of 500 years, or so much of the same rents and profits as shall from time to time remain after answering the trusts aforesaid, shall be received by the person or persons for the time being entitled to the same premises in reversion expectant upon the same term (*h*): PROVIDED ALWAYS, and it is hereby

**Marriage  
Settle-  
ment of  
Freeholds,  
Copy-  
holds, &c.**

Surplus  
rents to be  
taken by  
rever-  
sioner.

(*h*) The trusts of the term to secure portions were formerly, according to the usual practice, followed by provisions declaring trusts as to the receipt and application by the trustees of the rents and profits of the estate during the minorities of persons beneficially entitled, with powers to fell timber and work mines, and for the general management of the estate. Precedents of these clauses will be found in *Dav. Conv.* vol. i. p. 374 *et seq.* The necessity for such provisions seems, however, to be generally superseded by the following enactments of the Conveyancing Act, 1881.

Larger  
than  
statutory  
powers of  
leasing as  
to dispens-  
ing with  
notice.

#### "IX.—INFANTS.

#### INFANTS.

"41. Where a person in his own right seised of or entitled to land for an estate in fee simple, or for any leasehold interest Sales and leases on

**Marriage  
Settle-  
ment of  
Freeholds,  
Copy-  
holds, &c.**

behalf of  
infant  
owner.  
40 & 41  
Vict. c. 18.  
**Manage-  
ment of  
land and  
receipt  
and appli-  
cation of  
income  
during  
minority.**

declared that it shall be lawful for *A. B.* to lease the lands and hereditaments hereby settled or any

at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877.

"42.—(1.) If and as long as any person who would but for this section be beneficially entitled to the possession of any land is an infant, and being a woman is also unmarried, the trustees appointed for this purpose by the settlement, if any, or if there are none so appointed, then the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land, or of part thereof, or with power of consent to or approval of the exercise of such a power of sale, or if there are none, then any persons appointed as trustees for this purpose by the Court, on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply.

"(2.) The trustees shall manage or superintend the management of the land, with full power to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise, and to erect, pull down, rebuild, and repair houses, and other buildings and erections, and to continue the working of mines, minerals, and quarries which have usually been worked, and to drain or otherwise improve the land or any part thereof, and to insure against loss by fire, and to make allowances to and arrangements with tenants and others, and to determine tenancies, and to accept surrenders of leases and tenancies, and generally to deal with the land in a proper and due course of management; but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.

"(3.) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land.

"(4.) The trustees may apply at discretion any income which, in the exercise of such discretion, they deem proper, according to the infant's age, for his or her maintenance, education, or benefit, or pay thereout any money to the infant's parent or guardian, to be applied for the same purposes.

"(5.) The trustees shall lay out the residue of the income of the land in investment on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, with power to vary investments; and shall accumulate the income of the investments so made in the way of compound interest, by from time to time similarly investing such

part thereof (including — Hall, aforesaid, with the outbuildings, gardens, pleasure grounds, park, and demesne, and other lands usually occupied therewith), or any easement, right, or privilege of any kind, over or in relation to the premises for any term not exceeding in the case of a building lease 99 years, and in the case of a mining lease

**Marriage  
Settle-  
ment of  
Freeholds,  
Copy-  
holds, &c.**

---

income and the resulting income of investments; and shall stand possessed of the accumulated fund arising from income of the land and from investments of income on the trusts following (namely):

- “(i.) If the infant attains the age of twenty-one years, then in trust for the infant;
- “(ii.) If the infant is a woman and marries while an infant, then in trust for her separate use, independently of her husband, and so that her receipt after she marries, and though still an infant, shall be a good discharge; but
- “(iii.) If the infant dies while an infant, and being a woman without having been married, then, where the infant was, under a settlement, tenant for life, or by purchase tenant in tail or tail male or tail female, on the trusts, if any, declared of the accumulated fund by that settlement; but where no such trusts are declared, or the infant has taken the land from which the accumulated fund is derived by descent, and not by purchase, or the infant is tenant for an estate in fee simple, absolute or determinable, then in trust for the infant's personal representatives, as part of the infant's personal estate;

but the accumulations, or any part thereof, may at any time be applied as if the same were income arising in the then current year.

“(6.) Where the infant's estate or interest is in an undivided share of land, the powers of this section relative to the land may be exercised jointly with persons entitled to possession of, or having power to act in relation to, the other undivided share or shares.

“(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

“(8.) This section applies only where that instrument comes into operation after the commencement of this Act.”

Powers of jointuring and charging portions to provide for a future wife and the issue of a future marriage will be found in Precedent III., *post*, p. 273, and can be readily adapted to the purposes of a mere marriage settlement.

**Powers of  
jointuring  
and charg-  
ing por-  
tions.**

**Marriage  
Settle-  
ment of  
Freeholds,  
Copy-  
holds, &c.**

**As to lease  
of man-  
sion, &c.**

**As to  
mining  
rent.**

**Extension  
of powers  
of sale, and  
exchange,  
&c.**

60 years, and in the case of any other lease 21 years, without being under any obligation to give notice (i) of his intention in that behalf to the said trustees or trustee, or to any other person, before the making of any such lease or leases as aforesaid, or of any contract for the same: PROVIDED ALWAYS, that it shall be lawful for *A. B.* to lease ——— Hall aforesaid with the outbuildings, gardens, pleasure grounds, park and demesne, and other lands usually occupied therewith, for any term not exceeding 21 years without the consent of the said trustees or trustee, on an order of the Court (k): PROVIDED ALSO, that *A. B.* shall be entitled to take and receive the whole of the rent reserved under any mining lease granted by him for his own use and benefit (l): PROVIDED ALWAYS, and it is hereby agreed and declared, that if *A. B.* shall be desirous of selling or exchanging for other lands and hereditaments in England or Wales the whole or any part of the lands and hereditaments hereby settled (including, &c. *as on* p. 267), or any easement, right, or privilege, of any kind over or in relation to the same, or of effecting an enfranchisement of any part thereof, and shall give notice of his intention in that behalf to the said trustees, or if there shall be but one such

(i) The object of this and the two following clauses is to give to the tenant for life powers of leasing larger than those conferred by the Settled Land Act, by freeing the exercise of those powers from restrictions and conditions imposed by that Act. As to granting additional or larger powers, *ante*, p. 107. As to the obligation of the tenant for life to give to the trustees of the settlement not less than one month's notice before exercising his powers, see Settled Land Act, 1882, sect. 45, *ante*, p. 88.

(k) As to sale or lease of the principal mansion house, park, &c., see Settled Land Act, 1882, sect. 15, *ante*, p. 42.

(l) As to reservation of part of the rents of mines as capital money, see Settled Land Act, sect. 11, *ante*, p. 39.

trustee, to such one trustee, then the said trustees or trustee may immediately on receipt of such notice (*m*), or at any time thereafter, signify in writing their or his assents or assent to any such sale or exchange or enfranchisement as aforesaid, and thereupon *A. B.* may immediately, or at such time as he shall think fit, make such sale or exchange or enfranchisement or enter into any contract for the same: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, *A. B.* as settlor hereby covenants with *E. F.*, *G. H.* and *J. K.* that, in case the marriage shall be solemnized, he will forthwith, at his own cost, surrender into the hands of the lord of the manor of \_\_\_\_\_, in the county of \_\_\_\_\_, All those copyhold messuages and other buildings, farms, lands, and hereditaments described in the second schedule hereunder written, and all other if any the copyhold hereditaments of every description of *A. B.* situate in the respective parishes of \_\_\_\_\_ and \_\_\_\_\_ aforesaid, TO THE USE of *E. F.*, *G. H.* and *J. K.*, and their heirs, according to the custom of the Manor of \_\_\_\_\_, at and under the customary fines, rents, suits, and services, UPON SUCH TRUSTS and with, under and subject to such powers, provisions and declarations, as shall as nearly correspond with the uses and trusts hereinbefore limited, as the different qualities of the estates and the rules of equity will permit: AND THAT until the same premises shall be surrendered in pursuance of this covenant, *A. B.* will stand seised of the same premises in

**Marriage  
Settle-  
ment of  
Freeholds,  
Copy-  
holds, &c.**

---

Covenant  
to sur-  
render  
copyholds,  
upon trusts  
corre-  
sponding  
with the  
uses of the  
freeholds.

Declara-  
tion of  
trust till  
surrender.

(*m*) It is conceived that the proviso that the trustees may signify their assent to an intended sale, may be convenient, especially with a view to facilitating sales of outlying property.

**Marriage  
Settle-  
ment of  
Freeholds,  
Copy-  
holds, &c.**

**Wit-  
nesseth.**

**Assign-  
ment of  
jewels,  
plate, &c.**

**Habendum  
to trustees  
upon trust  
as heir-  
looms.**

**An inven-  
tory to be  
taken.**

trust for *E. F.*, *G. H.* and *J. K.* and their heirs, UPON SUCH TRUSTS and with and subject to such powers and provisions as the same could be subject to if the same had been so surrendered as aforesaid :

AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, *A. B.* as settlor hereby assigns and conveys to *E. F.*, *G. H.* and *J. K.*

All and singular the jewels, plate, furniture, pictures, statues, and other works of art, books, and other articles of domestic use and ornament now in or about

Hall, aforesaid, To HOLD the same to *E. F.*, *G. H.* and *J. K.* UPON TRUST to permit the same to be held and enjoyed as heirlooms (*m*) by the person or persons for the time being entitled to

Hall under the uses and limitations hereinbefore declared as nearly as the rules of law and equity will permit, but so that the said heirlooms shall not vest absolutely in any person hereby made tenant in tail by purchase of

Hall, unless he or she shall attain the age of twenty-one years, but on the death of such tenant in tail under that age shall go to person or persons who shall thereupon become entitled to

Hall, under the uses and limitations hereinbefore declared : PROVIDED ALWAYS, that as soon as conveniently may be, after the execution of these presents, an inventory shall be taken of the jewels, plate, and other articles hereinbefore assigned as heirlooms, and such inventory (to be revised as occasion shall require) shall be signed by the person for the time being entitled to the use of the heirlooms and also by the trustees or

(*m*) As to heirlooms, see Settled Land Act, 1882, sect. 37, and notes thereon, *ante*, p. 76.

trustee for the time being of these presents: PROVIDED ALSO, that the said heirlooms shall at all times be kept in good preservation, and adequately insured against loss or damage by fire by the person for the time being entitled to the enjoyment thereof, but it is hereby expressly agreed and declared that the trustees or trustee for the time being of these presents shall not be bound to see to the preservation or insurance of the said heirlooms, or be responsible for any loss or injury which may happen thereto, but the said trustees or trustee shall not be precluded from interfering for the protection thereof when and if he or they shall think fit: AND *A. B.* hereby covenants with *E. F.*, *G. H.* and *J. K.* that, notwithstanding anything whatsoever by him *A. B.*, or any of his ancestors or testators, done, omitted, or suffered to the contrary, he, *A. B.*, now hath in himself good right and full power to grant and convey the hereditaments and premises hereinbefore granted and conveyed unto and to the uses hereinbefore declared, in manner aforesaid, and to surrender the heredita-

**Marriage  
Settle-  
ment of  
Freeholds,  
Copy-  
holds, &c.**

---

Covenant  
for right to  
convey (n)  
freeholds,

and to sur-  
render  
copyholds,

(n) By sect. 7, sub-sect. 1, of the Conveyancing, &c. Act, 1881, it is provided that in a conveyance for valuable consideration shall be implied covenants by a person who is expressed to convey "as beneficial owner" for right to convey, quiet enjoyment, freedom from incumbrances, and further assurance. In a settlement, a limited covenant for further assurance by a person who is expressed to convey "as settlor" is alone to be implied.

As to the usual practice hitherto of inserting covenants for title in settlements of land, see *Dav. Conv.* vol. iii. pt. i. p. 626. It is probable that the vesting by the Settled Land Act, 1882, of powers of sale and exchange in the tenant for life instead of giving them (according to the general practice of conveyancers) to the trustees may, to some extent, lead to the disuse of these covenants, but it has been thought advisable to insert them in the above precedent, that they may be used, if desired, as the effect of recent legislation with regard to conveyancing remains to be fully ascertained. A covenant for further assurance (limited) is implied by the conveyance by *A. B.* "as settlor" (p. 258).

**Marriage  
Settle-  
ment of  
Freeholds,  
Copy-  
holds, &c.**

for quiet  
enjoy-  
ment,

free from  
incum-  
brances.

ments hereinbefore covenanted to be surrendered to the use of *E. F.*, *G. H.* and *J. K.* according to the custom of the Manor of            and in manner aforesaid: AND that the said hereditaments and premises hereinbefore granted and assured and covenanted to be surrendered or expressed and intended so to be shall at all times hereafter go and remain to the uses hereinbefore expressed of the same respectively: AND that the said hereditaments and premises hereinbefore granted and assured and covenanted to be surrendered shall from time to time, and at all times hereafter, be peaceably and quietly entered into and upon, and held, occupied, and enjoyed, and the rents and profits thereof respectively, and of every part thereof respectively, received and taken according to the nature of the premises respectively, without any interruption, claim, or demand of or by *A. B.*, or of or by any other person or persons claiming by, from, through, under, or in trust for him or any of his ancestors or testators, AND that free and clear and absolutely released and discharged or otherwise by *A. B.*, his heirs, executors and administrators well and sufficiently indemnified against all former and other estates, titles, charges, incumbrances, claims and demands whatsoever, either already made, occasioned, or suffered, or hereafter to be made, occasioned, or suffered, by the said *A. B.*, or any of his ancestors or testators, or any person or persons lawfully or equitably claiming, or to claim by, from, through, under, or in trust for him, them, or any of them.

IN WITNESS, &c.



- III. RESETTLEMENT of REAL ESTATE by a FATHER and ELDEST SON on the MARRIAGE of the latter ; LIMITATION of a RENT-CHARGE to the intended HUSBAND, and of JOINTURE RENT-CHARGES to the intended WIFE ; Subject thereto to the FATHER for LIFE, remainder to the intended HUSBAND for LIFE, remainder (subject to a term for securing PORTIONS) to his FIRST and OTHER SONS in TAIL MALE, with remainders, comprising LIMITATIONS to the husband's YOUNGER BROTHER for LIFE and his ISSUE in TAIL ; POWERS of JOINTURING and CHARGING PORTIONS ; NAME and ARMS clause.

Resettle-  
ment  
with Limi-  
tations to  
Collate-  
rals.

---

THIS INDENTURE, dated the            day of            , Parties.

BETWEEN *J. B.* of &c. [*father of intended husband*] of the first part, *A. B.* of &c. [*intended husband*] of the second part, *C. D.* of &c. [*intended wife*] of the third part, and *E. F.* of &c., *G. H.* of &c., and *J. K.* of &c. [*trustees*] of the fourth part : WHEREAS by an indenture dated &c., and expressed to be made between [*parties*] (being a settlement made in consideration of the marriage then intended, and afterwards solemnized between *J. B.* and *K. B.* [*his wife*]), the lands and hereditaments described in the schedule thereunder written were granted and conveyed to [*grantees to uses*], To hold the same unto [*the grantees*] in fee simple to the use of *J. B.* in fee simple until the solemnization of the then intended marriage ; and, after the solemnization thereof, to the use of *J. B.* for life without impeachment of waste, with remainder to the use and intent that *M. B.* (if

Recitals.  
Settlement  
on mar-  
riage of  
husband's  
parents.

**Resettle-  
ment  
with Limi-  
tations to  
Collate-  
rals.**

---

she should survive *J. B.*) should out of the same premises receive for her life a yearly rent-charge of £ , with the usual powers of distress and entry and other remedies for recovering payment of the rent-charge when in arrear, and subject as aforesaid to the use of [*trustees of term for securing rent-charge*], their executors, administrators and assigns for the term of 99 years, upon the trusts in the same indenture mentioned for securing the payment of the rent-charge; and, subject as aforesaid, to the use of [*trustees of portions*], their executors, administrators and assigns for the term of 1,000 years, upon the trusts in the same indenture mentioned for raising for the portion or portions of the child or children of *J. B.* by *K. B.* (other than an eldest or only son), if there should be but one such child, the sum of £ , and if there should be more than one such child, the sum of £ , with the provisions therein mentioned for the maintenance and education of such child or children, with remainder to the use of the first and other sons of *J. B.* by *K. B.* in tail male, with divers remainders over:

**Powers of  
sale, &c.**

AND WHEREAS in the said indenture are contained powers of sale and exchange as therein mentioned, and it is thereby declared that the moneys to arise from any such sale shall be laid out in the purchase of other lands and hereditaments to be settled to the like uses:

**Sale and  
exchange  
of lands  
under  
powers in  
recital  
settle-  
ment.**

AND WHEREAS certain of the lands and hereditaments comprised in the said indenture have been from time to time sold or exchanged for other lands and hereditaments under the powers in that

behalf contained in the same indenture, and the proceeds of such sales have been from time to time laid out in the purchase of other lands and hereditaments, which have been conveyed to the uses of the settlement created by the said indenture: AND WHEREAS the lands and hereditaments now subject to the uses and trusts of the said indenture are particularly described in the schedule hereunder written: AND WHEREAS *A. B.* is the first son of *J. B.* by *K. B.*, and he attained the age of twenty-one years on the       day of       : AND WHEREAS a marriage is intended to be solemnized between *A. B.* and *C. D.*: AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said lands and hereditaments described in the schedule hereunder written should be settled to the uses, and in manner hereinafter appearing: AND WHEREAS, in pursuance and part performance of the said agreement, by an indenture dated the       day of       , and enrolled and perfected as a disentailing assurance, or intended so to be, and expressed to be made between *J. B.* of the first part, *A. B.* of the second part, and *Y. Z.* of the third part, *J. B.* and *A. B.* (with consent of *J. B.* as protector of the settlement) have conveyed to *Y. Z.* the lands and hereditaments described in the schedule hereunder written, and all other (if any) the hereditaments, subject to the subsisting uses of the said indenture of settlement of the       day of       , with their appurtenances, To hold the same unto *Y. Z.* in fee simple (subject to the uses subsisting in the same premises by virtue of the

Resettle-  
ment  
with Limi-  
tations to  
Collate-  
rals.

---

Lands now  
subject to  
the settle-  
ment.

Husband  
the first  
son of the  
marriage.

Agreement  
for mar-  
riage and  
settle-  
ment.

Disen-  
tailing as-  
surance.

Appoint-  
ment.  
Parcels.

said indenture of settlement of the                      day of                      , and which preceded the use thereby limited to the first son of *J. B.* by *K. B.* in tail male other than the use limited to *J. B.* for his life) to such uses, and upon, with and subject to such trusts, powers and declarations as *J. B.* and *A. B.* shall by deed appoint, and in default of such appointment, and so far as no such appointment shall extend, to the uses, and upon, with and subject to the trusts, powers and declarations to which the premises would have stood limited, if the indenture now in recital had not been executed : NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the intended marriage, and in exercise of the power in this behalf given to them by the indenture of the                      day of                      [*disentailing deed*], and of every other power then hereunto enabling, *J. B.* and *A. B.*, as settlors, hereby appoint that all the messuages, lands, and hereditaments described in the schedule hereunder written, and all other (if any) the hereditaments which, immediately before the execution of the indenture of the                      day of                      [*disentailing deed*], were subject to the then subsisting uses of the hereinbefore recited indenture of settlement, shall immediately after the execution of these presents, subject to the uses subsisting in the same premises by virtue of the said indenture of settlement, and which immediately preceded the use thereby limited to the first son of *J. B.* and *K. B.* in tail male, other than the use limited to *J. B.* for his life, remain and be, until the solemnization of the intended marriage,

TO THE USES, and upon, with, and subject to the trusts, powers and declarations to, upon, and subject to which the premises stood limited immediately before the execution of these presents; and from and after the solemnization thereof TO THE USE that *A. B.* may during the joint lives of himself and *J. B.* receive the yearly rent-charge of £                      to be charged upon the premises hereby settled, and to be payable by equal quarterly payments without any deduction, the first of such payments to be made at the end of three calendar months of the intended marriage if *A. B.* shall then be living or if not, a proportional part to be paid at his death; AND TO THE FURTHER USE that if *A. B.* shall die in the lifetime of *C. D.*, she may from and after the death of *A. B.* receive during her life the yearly rent-charge or rent-charges following (that is to say), if and so long as *J. B.* shall be living, the yearly rent-charge of £                      , and after the death of *J. B.* the yearly rent-charge of £                      , to be respectively charged upon the premises hereby settled, and to be payable by equal quarterly payments without deduction, except succession duty, the first of such payments as to the rent-charge of £                      to be made at the end of three calendar months after the death of *A. B.*, if *C. D.* and *J. B.* shall then be living, and as to the rent-charge of £                      to be made at the end of three calendar months after the death of the survivor of *J. B.* and *A. B.*, if *C. D.* shall then be living, such yearly rent-charges limited to *C. D.* to be in full of her jointure and in bar

**Resettle-  
ment  
with Limi-  
tations to  
Collate-  
rals.**

To subsist-  
ing uses  
until the  
marriage.

After-  
wards, to  
the use  
that in-  
tended  
husband  
may re-  
ceive a  
rent-  
charge for  
his life.

And that  
the wife  
may re-  
ceive rent-  
charges by  
way of  
jointure.

**Resettle-  
ment  
with Limi-  
tations to  
Collate-  
rals.**

Remainder  
to use of  
father for  
life.

Remainder  
to use of  
intended  
husband  
for life.

Remainder  
to use of  
trustees for  
500 years.

Remainder  
to use of  
first and  
other sons  
of husband  
in tail  
male.

Remainder  
to use of  
brother for  
life.

Remainder  
to his first  
and other  
sons in tail  
male.

Remainder  
to first and  
other sons  
of husband  
in tail.

Remainder  
to use of  
first and  
other  
daughters  
of husband  
in tail.

Remainder  
to use of  
brothers'  
sons and

of all dower or freebench : PROVIDED that if *C. D.* shall not be living at the time appointed for payment of the said rent-charge respectively, then a proportional part of the rent-charge to which *C. D.* shall have become entitled shall be paid at her death :

AND, subject and charged as aforesaid, To THE USE of *J. B.* for his life without impeachment of waste, in restoration and continuation of the former life estate of *J. B.* limited to him by the hereinbefore recited indenture of settlement of the            day of

: And, after the decease of *J. B.*, To THE USE of *A. B.* for his life without impeachment of waste : AND, after the decease of *A. B.*, To THE USE of *E. F.*, *G. H.*, and *J. K.* for a term of 500 years without impeachment of waste, on the trusts hereinafter declared ; And, subject thereto, To THE USE of the first and other sons of *A. B.* successively according to seniority in tail male, with remainder To THE USE of *L. B.* [*the second son of J. B.*] for his life without impeachment of waste, with remainder To THE USE of the first and other sons of *L. B.* successively according to seniority in tail male [*similar limitations to the use of M. B., N. B. &c., and their first and other sons respectively*], with remainder To THE USE of the first and other sons of *A. B.* successively according to seniority in tail, with remainder To THE USE of the first and other daughters of *A. B.* successively according to seniority in tail, with remainder To THE USE of the first and other sons of *L. B.* successively, according to seniority in tail, with remainder to the first and other daughters of *L. B.* successively, according to seniority in

tail, with remainder [*similar limitations to the use of the sons and daughters of M. B., N. B., &c.*] To THE USE of A. B. in fee simple. [*Appointment of Trustees, ante, p. 260; Trusts of term of 500 years for raising portions, ante, p. 261, to be paid (in default of appointment to the contrary) to the children on attaining twenty-one years or marriage, "if the same respectively shall happen after the death of the survivor of J. B. and A. B.; but if the same respectively shall happen during their lives, or the life of such survivor, then immediately after the death of such survivor;" [Hotchpot clause, p. 262.] "AND IT IS HEREBY FURTHER AGREED AND DECLARED, that the said trustees or trustee do and shall after the death of the survivor of J. B. and A. B." [Maintenance, &c. clause, ante, p. 262]: "AND UPON FURTHER TRUST that the said trustees or trustee do and shall after the death of A. B., or in his lifetime in case he shall so direct by any writing under his hand (but during the lifetime of J. B., with his consent in writing), raise," &c. [Advancement clause, ante, p. 263; Power for "A. B. after the death of J. B." to require portions to be raised in his lifetime, ante, p. 264; Power for trustees to create specific securities, and to limit a term, ibid.; Proviso that surplus rents shall be taken by reversioner, p. 265]: PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that it shall be lawful for A. B., at any time, by deed, or will, or codicil, to appoint to any woman other than C. D. whom he may marry, for her life, any yearly rent-charge or rent-charges by way of jointure, and in bar or without being in bar of dower and freebench,*

**Resettle-  
ment  
with Limi-  
tations to  
Collate-  
rals.**

daughters  
in tail.

Remainder  
to use of  
husband  
in fee.

Power for  
the hus-  
band to  
jointure a  
future  
wife.

**Resettle-  
ment  
with Limi-  
tations to  
Collate-  
rals.**

---

**Power for  
the hus-  
band to  
charge  
portions  
for chil-  
dren of a  
future  
marriage,**

**to charge  
annual  
sums for  
mainte-  
nance, &c.  
of such  
children,**

not exceeding in the whole the sum of £ ,  
to be charged upon all or any of the premises  
hereby settled, and to be paid at such times  
and in such manner as *A. B.* shall deem proper,  
but so that no such payment shall be made  
during the life of *J. B.* without his consent  
in writing: AND IT IS HEREBY DECLARED,  
that this power of jointuring may be exercised  
as often as *A. B.* shall marry: PROVIDED AL-  
WAYS, that if the said *A. B.* shall hereafter  
marry any woman other than *C. D.*, it shall  
be lawful for *A. B.*, at any time by deed, will, or  
codicil (but subject to the life interest of *J. B.*  
and to the said term of 500 years, and the trusts  
thereof), to charge all or any of the hereditaments  
hereby settled with the payment of any sum of  
money for the portion or portions of the child or  
children of *A. B.* by any after-taken wife, not  
exceeding , If there shall be but one such  
child, the sum of £ , AND IF there shall  
be but two such children, the sum of £ ,  
AND IF there shall be three or more such children,  
the sum of £ , TO BE payable to or amongst  
such child or children, or any one or more exclu-  
sively of the other or others of such children, at  
such times, in such manner in every respect, and,  
if more than one, in such shares, as *A. B.* shall in  
manner aforesaid direct; AND by the same or any  
other deed, or by will or codicil (but subject as  
aforesaid), to charge the premises charged with  
such portion or portions respectively with the pay-  
ment of any yearly sum or sums of money (not  
exceeding what the interest of the portion or por-



tions would amount to after the rate of £4 per cent. per annum) to be applied for the maintenance and education of the child or children for whom the portion or portions charged as aforesaid shall be intended, until such portion or portions shall become payable; the said yearly sum or sums of money to be clear of all deductions except succession duty, and to commence from such time or times, and to be raised and paid in such proportions, at such time or times, and in such manner as *A. B.* shall in manner aforesaid direct: AND by the same or any other deed, or by will or codicil (but subject as aforesaid), to limit and appoint the premises charged as aforesaid to any person or persons, for any term of years, with or without impeachment of waste, upon usual trusts, by mortgage or otherwise, to raise the principal and yearly sum or sums so charged as last aforesaid, and the costs and expenses (if any) to be incurred in or about the execution of the trusts thereof: PROVIDED ALWAYS, that it shall be lawful for every son of *J. B.* (other than *A. B.*) either before or after he shall become tenant for life in possession of the hereditaments hereby settled (but subject to the uses and estates preceding his estate, and to the powers annexed to such preceding uses or estates, and to the uses or estates limited in exercise of such powers), by deed, will or codicil, to appoint to any woman whom he may marry for her life any yearly rentcharge by way of jointure, and in bar or without being in bar of dower and freebench, not exceeding the sum of £            to be charged upon all or any of

**Resettle-  
ment  
with Limi-  
tations to  
Collate-  
rals.**

---

to limit  
term to  
trustees to  
secure por-  
tions, &c.

Power for  
tenant for  
life (other  
than father  
and in-  
tended  
husband)  
to jointure.

**Resettle-  
ment  
with Limi-  
tations to  
Colla-  
terals.**

---

No joint-  
ture to be  
charged  
unless ap-  
pointor or  
his issue  
become  
entitled in  
possession.

Estates not  
to be  
charged  
with more  
than a  
fixed  
yearly  
sum for  
jointures.

the hereditaments hereby settled and to be paid at such times, and in such manner, as the person exercising this power shall deem proper: AND IT IS HEREBY DECLARED, that this power of jointuring may be exercised as often as the person for the time being entitled to exercise the same shall marry: PROVIDED ALWAYS, that no jointure rentcharge appointed in exercise of the power lastly-heretofore contained shall actually become a charge upon the hereditaments expressed to be charged therewith or be payable, unless the person who shall have exercised such power shall become tenant for life in possession of the hereditaments hereby settled, or unless some of his issue shall become entitled to the possession thereof, or would have become so entitled if of full age: PROVIDED ALSO, that the hereditaments hereby settled shall not, under the powers of jointuring heretofore contained, be at any one time subject to the payment of rentcharges exceeding in the whole the yearly sum of £           , such yearly sum to be inclusive of the rentcharge of £            heretofore limited to *C. D.*, and of any rentcharge which may be appointed in favour of any future wife of *A. B.*, so that if by the exercise of the powers of jointuring heretofore contained the said hereditaments, or any part thereof, shall for the time being, be charged with a greater yearly sum in the whole than £           , the rentcharge, or such part thereof, by the charge whereof such excess shall have been occasioned, shall, during the continuance of such excess, absolutely sink for the benefit of the person for the time being

entitled under the limitations hereinbefore contained to the receipt of the rents and profits of the hereditaments hereby settled, and the rent-charges respectively shall have precedence according to the priority in order of limitation of the estates of the several persons exercising this power:

PROVIDED ALWAYS, that it shall be lawful for every son of *J. B.*, other than *A. B.*, either before or after he shall become tenant for life in possession of the hereditaments hereby settled (but subject to the uses and estates preceding his estate and to the powers annexed to such preceding uses or estates, and to the uses and estates limited in exercise of such powers) by deed, will or codicil, to charge all or any of the hereditaments hereby settled with the payment of any sum or sums of money for the portion or portions of the child or children (other than an eldest or only son, or a son who, by the death of an elder son or sons, shall be or become an eldest or only son) of the person for the time being exercising this power not exceeding, If there shall be but one such child (other than as aforesaid), the sum of £       , AND IF there shall be but two such children (other than as aforesaid), the sum of £       , AND IF there shall be three or more such children (other than as aforesaid), the sum of £       , to be payable to or amongst such child or children, or any one or more exclusively of the others or other of such children, at such times and in such manner in every respect, and if more than one in such shares, as the person for the time being exercising this power shall in manner aforesaid direct, AND by the same or any other deed, or by will or

**Resettle-  
ment  
with Limi-  
tations to  
Colla-  
terals.**

---

Powers for tenants for life (other than father and intended husband) to charge portions.

**Resettle-  
ment  
with Limi-  
tations to  
Colla-  
terals.**

To charge  
annual  
sums.

To limit  
terms.

No portion  
to be  
charged  
unless ap-  
pointor or  
his issue  
becomes  
entitled in  
possession.

Estates not  
to be  
charged  
with more  
than a  
fixed sum  
for por-  
tions.

Name  
and arms  
clause.

codicil (but subject as aforesaid), to charge the premises charged with such portion or portions, &c. (see *ante*, p. 280), to commence from such time or times, &c., as the person for the time being exercising this power shall in manner aforesaid direct: AND by the same or any other deed, &c. (see *ante*, p. 281): PROVIDED ALWAYS, that no portion which may be charged in exercise of the power lastly-hereinbefore contained shall actually become a charge (see *ante*, p. 282): PROVIDED ALSO, that the hereditaments hereby settled shall not under the powers of charging portions hereinbefore contained become ultimately liable or subject to the payment of any greater sum of money in the whole than the principal sum of £ , such principal sum to be inclusive of the sums of money hereby charged, or which may hereafter be charged, for the portions of children of *A. B.* by *C. D.*, or by any future wife, so that if by the exercise of the aforesaid powers of charging portions or any of them the hereditaments hereby settled, or any part thereof, would, but for this present proviso, be charged with a greater sum in the whole than £ , the charge or charges creating such excess, shall, during the continuance of such excess, not take effect as to the portion or portions to be thereby respectively charged, or as to such part thereof as shall form the excess, and charges for portions shall have precedence according to the priority in order of limitation of the estates of the several persons exercising this power: PROVIDED ALWAYS, that every person who after the determination of the life estate of *A. B.* shall, by virtue

of the limitations hereinbefore contained or of this proviso, become entitled beneficially to the possession of the said manors and lands hereinbefore conveyed as tenant for life, or tenant in tail male, or in tail by purchase, and who shall not then use and bear the surname and arms of *B.*, shall within the space of one year next after he or she shall so become entitled, or (being an infant) within one year after he or she shall attain the age of twenty-one years, AND that every person to whom any female so becoming entitled as aforesaid shall be married, or whom she shall afterwards marry, shall, within one year next after such female shall so become entitled or shall so marry, whichever of such events shall last happen (unless in the said respective cases any such person shall be prevented by death), take upon himself or herself and use on all occasions the surname of *B.* only or in addition to his or her other surname (but so that the name of *B.* shall be the last and principal name), and shall quarter the arms of *B.* with his or her family arms: AND shall within one year apply for and endeavour to obtain a licence from the Crown, or take such other steps as may be necessary to enable and authorize him or her respectively so to take and use the surname of *B.*, and to quarter the arms of *B.* with his or her family arms as aforesaid: AND IT IS HEREBY DECLARED that in case any person who shall so become entitled as aforesaid, or the husband of any such person, being a female, shall neglect or refuse within the said one year to take and use such surname, or to quarter such arms, or to take such steps as aforesaid, or

**Resettle-  
ment  
with Limi-  
tations to  
Colla-  
terals.**

---

**Penalty for  
neglect to  
assume  
name and  
arms.**

**Resettle-  
ment  
with Limi-  
tations to  
Colla-  
terals.**

---

shall at any time afterwards discontinue to use such surname or to quarter such arms, then and in every such case from and after the expiration of the said one year, or immediately after such discontinuance as aforesaid (as the case may be), if the person who or whose husband shall so for the time being refuse, neglect or discontinue as aforesaid, shall be, either by himself or herself, or together with her husband, tenant for life as aforesaid, the limitations hereinbefore contained to the use of such person during his or her life shall absolutely determine and be void ; AND if the person who or whose husband shall so, for the time being, refuse, neglect or discontinue as aforesaid, shall be tenant in tail male or in tail, then the limitations hereinbefore contained under which such person shall be so tenant in tail male or in tail, and in case of such person being tenant in tail male, then also the limitations hereinbefore contained to him in tail, shall absolutely determine and be void ; AND in the said respective cases the manors and lands hereby conveyed shall immediately go over in the same manner as if such person, being tenant for life, were actually dead, or, being tenant in tail male or in tail, were actually dead, and there was a general failure of his or her issue, without prejudice nevertheless to any jointure or jointures, portion or portions, sum or sums of money, lease or leases, sale or sales, exchange or exchanges, partition or partitions, or appointment or appointments of new trustees, which, previously to such cesser, failure or determination, shall have been charged, granted or made under any of the powers

for those purposes herein contained or given by any statute: PROVIDED ALWAYS, that the determination or failure of the estate of any tenant for life by virtue of the proviso hereinbefore contained shall not exclude or prejudice any of the contingent remainders hereinbefore limited to his or her sons and daughters respectively or any other persons, but that the remainder hereinbefore limited to the said trustees or trustee during the life of such tenant for life shall take effect or continue for preserving such contingent remainders and giving effect to them as they arise; AND that immediately from and after such determination or failure of such estate for life, and during the suspense and contingency of any such expectant remainders, the said trustees or trustee do and shall pay and apply the income of the premises unto the person or persons for the time being entitled under or by virtue of the limitations and provisions hereinbefore contained in remainder expectant on the death of such person as aforesaid (o): AND IT IS HEREBY AGREED AND DECLARED, that the power of appointing new trustees for the purposes of these presents shall be vested in *J. B.* and *A. B.* during their joint lives, and in the survivor of them during his life. IN WITNESS, &c.

Resettle-  
ment  
with Limi-  
tations to  
Colla-  
terals.

Contingent  
remainders  
not to be  
prejudiced.

Power of  
appointing  
trustees.

(o) The provisos for extension of powers of leasing and sale of the settled lands given in Precedent III., *ante*, pp. 267, 268, may readily be adopted for use here, if thought advisable, by providing that "it shall be lawful for *J. B.* during his life, and after his death for *A. B.*, and every other person who shall, under the limitations and uses hereinbefore contained, become entitled for an estate for life, or in tail male, or in tail in possession, to the lands and hereditaments hereby settled, to lease," &c.

**Marriage  
Settle-  
ment of  
Freeholds  
and Lease-  
holds.**

---

**IV. SETTLEMENT on MARRIAGE of FREEHOLDS to uses and of LEASEHOLDS in trust for the HUSBAND and WIFE successively for LIFE, with REMAINDER to the ISSUE of the marriage as the husband and wife, or the survivor, shall APPOINT, and, in default of appointment, to the children in equal shares in TAIL as TENANTS IN COMMON, with CROSS-REMAINDERS.**

Parties.

THIS INDENTURE, made, &c. BETWEEN *A. B.*, of &c. [*the intended husband*] of the first part, *C. D.*, of &c. [*the intended wife*] of the second part, and *E. F.*, of &c. *G. H.*, of &c., and *J. K.* of &c.

Wit-  
nesseth.

[*the trustees*] of the third part, WITNESSETH that in consideration of the intended marriage between

Grant of  
freeholds.

*A. B.* and *C. D.*, *A. B.* as settlor hereby grants and conveys to *E. F.*, *G. H.*, and *J. K.* ALL

Habendum  
to trustees  
until the  
marriage  
to use of  
husband,

THAT [*describe freehold parcels*], To HOLD to *E. F.*, *G. H.*, and *J. K.* in fee simple To THE

And after-  
wards, to  
use of  
husband  
for life,

USE of *A. B.* in fee simple until the marriage, and, after the marriage, To THE USE of *A. B.* during

Remainder  
to use of  
wife for  
life,

his life without impeachment of waste, with remainder after his death To THE USE of *C. D.* during

Remainder  
to issue of  
marriage  
as husband  
and wife  
or survivor  
appoint,

her life without impeachment of waste, with remainder after her death To THE USE of all or such

In default  
to use of  
children as  
tenants in  
common  
in tail.

one or more of the issue of the marriage in such manner as *A. B.* and *C. D.* shall by deed appoint;

AND IN DEFAULT of or until such appointment as the survivor of *A. B.* and *C. D.* shall by deed or will

or codicil appoint, AND IN DEFAULT of and until such appointment, if there shall be only one child

of the marriage, To THE USE of such only child in tail, but if there shall be more than one such child,

then To THE USE of all such children in equal shares as tenants in common in tail, with cross-remainders



between them in tail, with remainder TO THE USE of *A. B.* in fee simple [*Here insert such powers and provisions as may be advisable, see preceding precedents*]: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, *A. B.* as settlor hereby assigns and conveys to *E. F.*, *G. H.* and *J. K.* ALL [*describe parcels as in the lease*], ALL which premises were by an indenture of lease dated &c., and expressed to be made &c., demised &c., To HOLD to *E. F.*, *G. H.* and *J. K.* during all the residue now to come and unexpired of the said term of years at and under the rent, covenants, and conditions by and in the said indenture of lease reserved and contained, and on the part of the lessee to be paid, observed and performed, UPON TRUST out of the rents and profits of the premises hereby assigned to pay the rent and observe and perform the covenants and conditions by and in the said lease reserved and contained, and on the part of the lessee to be paid, observed and performed: AND, subject thereto, upon such trusts, and with and subject to such powers, provisions and declarations as shall as nearly correspond with the uses, trusts, powers, provisions and declarations hereinbefore limited, declared and contained of and concerning the premises hereinbefore expressed to be hereby granted, as the different nature and quality of the premises, and the rules of law and equity, will permit, but not so as to increase or multiply charges or powers of charging (*p*), and so that the leasehold premises shall not

**Marriage  
Settle-  
ment of  
Freeholds  
and Lease-  
holds.**

Remainder  
to use of  
husband  
in fee.

Wit-  
nesseth.

Assign-  
ment of  
leaseholds.

Haben-  
dum.

On trusts  
corre-  
sponding  
with uses  
of free-  
holds.

(*p*) As to multiplication of charges, see *Hindle v. Taylor*, 5 De G., M. & G. 577.

**Marriage  
Settle-  
ment of  
Freeholds  
and Lease-  
holds.**

---

vest absolutely in any person hereby made tenant in tail (*p*) by purchase of the premises hereinbefore expressed to be hereby granted, unless he shall attain the age of twenty-one years, but on his death under that age shall go in the same manner as if they had been freeholds of inheritance included in the grant hereinbefore contained (*q*). IN WITNESS, &c.

**Devise in  
strict  
Settle-  
ment.**

---

V. STRICT SETTLEMENT *by WILL to USES for the benefit of the testator's BROTHER and his issue; POWERS of JOINTURING and charging PORTIONS; BEQUEST of PERSONALTY to follow limitations of the SETTLED LAND.*

**Devise in  
strict  
settlement  
to uses for  
benefit of  
testator's  
brother  
and exist-  
ing and  
after-born  
issue.**

I, *A. B.*, of &c., hereby revoke all wills and testamentary dispositions heretofore made by me, and declare this to be my last will: I DEVISE all my real estate (except what I otherwise devise by this my will or any codicil thereto) TO THE USE of my brother *C. B.* for his life without impeachment of waste, and after his death TO THE USE of my nephew *D. B.*, the eldest son of *C. B.*, for his life without impeachment of waste, and after his death TO THE USE of the first and other sons of *D. B.* born during my life successively according to seniorities for the life of such son without impeachment of waste, and after the death of such son TO THE USE of his first and other sons successively according to

(*p*) If this form is used in a settlement creating successive remainders in tail male as well as in tail, say "tenant in tail male or in tail by purchase."

(*q*) As to inserting covenants for title in a settlement, see note (*n*), *ante*, p. 271.

seniority in tail male, with remainder TO THE USE of the same first and other sons successively according to seniorities in tail, with remainder TO THE USE of the son or sons of *D. B.* born after my death successively according to seniority in tail male, with remainder TO THE USE of the same son or sons in tail, with remainder TO THE USE of my own right heirs: PROVIDED ALWAYS, and I hereby declare that it shall be lawful for every person hereby made tenant for life of the premises, either before or after he shall become entitled to the possession thereof (but subject to the uses and estates preceding his estate, and to the powers annexed to such preceding uses and estates, and to the uses or estates limited in exercise of such powers) by deed, will or codicil to appoint to any woman whom he may marry for her life any yearly rent-charge by way of jointure, and in bar or without being in bar of dower and freebench, not exceeding the sum of £        to be charged on all or any of the premises, and to be paid at such time and in such manner as the person exercising this power shall deem proper; and this power of jointuring may be exercised as often as the person entitled to exercise the same shall marry: PROVIDED ALWAYS, and I hereby declare, that no jointure rent-charge shall actually become a charge upon the premises, or be payable, unless the person who shall have exercised such power shall become tenant for life in possession of the premises, or unless some of his issue shall become entitled to the possession thereof or would have become so entitled if of full age: PROVIDED ALSO, that the

Devise in  
strict  
Settle-  
ment.

---

Remainder  
to use of  
testator's  
right  
heirs.

Power of  
jointuring.

No jointure to be charged unless appointor or his issue become entitled in possession.

Devise in  
strict  
Settle-  
ment.

Estates not  
to be  
charged  
with more  
than a cer-  
tain yearly  
sum for  
jointures.

Power for  
tenants for  
life to  
charge  
portions.

premises hereby devised shall not at any one time be subject to the payment in respect of jointure rent-charges of a greater yearly sum in the whole than £ , so that if by the exercise of the power of jointuring hereinbefore contained the premises or any part thereof shall, for the time being, be charged with a greater yearly sum in the whole than £ , the rent-charge, or such part thereof by the charge whereof such excess shall have been occasioned, shall during the continuance of such excess absolutely sink for the benefit of the person for the time being entitled under this my will to the receipt of the rents and profits of the premises hereby devised, and the rent-charges respectively shall have precedence according to the priority in order of limitation of the estates of the several persons exercising this power: PROVIDED ALWAYS, and I further declare, that it shall be lawful for every person hereby made tenant for life of the premises, either before or after he shall become entitled to the possession thereof, but subject to the uses and estates preceding his estates and to the powers annexed to such preceding uses and estates, and to the uses or estates limited in exercise of such powers, by deed, will, or codicil, to charge all or any of the premises hereby devised with the payment of any sum or sums of money for the portion or portions of his child or all or any of his children, other than an eldest or only son, or a son who by the death of an elder son or sons shall be or become an eldest or only son, not exceeding, if there shall be but one such child

(other than as aforesaid), the sum of £            and if there shall be but two such children (other than as aforesaid), the sum of £            and if there shall be three or more such children (other than as aforesaid), the sum of £            to be payable to or amongst such child or children, or any one or more exclusively of the others or other of such children, at such time and in such manner in every respect, and, if more than one, in such shares as the person for the time being exercising this power shall in manner aforesaid appoint; AND by the same or any other deed, or by will, or codicil, to charge the premises charged with such portion or portions respectively with the payment of any yearly sum or sums of money (not exceeding what the interest of the portion or portions would amount to after the rate of £4 per cent. per annum) to be applied for the maintenance and education of the child or children for whom the portion or portions charged as aforesaid shall be intended until such portion or portions shall become payable, the said yearly sum or sums of money so charged to be clear of all deductions except succession duty and to commence from such time or times and to be raised, and paid in such proportions at such time or times and in such manner as the person for the time being exercising this power shall direct, AND by the same or any other deed, or by will or codicil, but subject as aforesaid, to limit and appoint the premises charged as aforesaid to any person or persons for any term of years, with or without impeachment of waste, upon usual trusts, by mortgage or other-

Devise in  
strict  
Settle-  
ment.

---

**Devise in strict settlement.**

No portion to be charged unless appointor or his issue becomes entitled in possession. Estates not to be charged with more than a certain sum for portions.

Legacies. General bequest of residuary personalty.

wise, to raise the principal and yearly sums so charged as aforesaid and the costs and expenses, if any, to be incurred in the execution of the trusts thereof: PROVIDED ALWAYS, and I hereby declare, that no portion which may be charged in exercise of the power in that behalf hereinbefore contained shall actually become a charge (see *ante*, p. 291): PROVIDED ALSO, that the premises hereby devised shall not under the powers of charging hereinbefore contained become ultimately liable or subject to the payment of any greater sum of money in the whole than the principal sum of £ , so that if the premises hereby devised would but for this present proviso be charged with a greater sum in the whole than £ , the charge or charges creating such excess shall during the continuance of such excess not take effect as to the portion or portions to be thereby respectively charged, or as to such part thereof as shall form the excess, and charges for portions shall have precedence according to the priority in order of limitation of the estates of the several persons exercising this power: I BEQUEATH the following legacies; that is to say [*legacies*]: I GIVE AND BEQUEATH all my personal estate (except what I otherwise bequeath by this will or any codicil thereto) unto *E. F.*, *G. H.* and *J. K.*, upon trust that they or the survivor or survivors of them, or other the trustees or trustee for the time being of this my will, do and shall call in, sell, and convert into money such part thereof as shall not consist of money, and do and shall with and out of the proceeds of such calling in, sale, and conversion, and with and out

of my ready money pay my funeral and testamentary expenses and debts, and the legacies hereby bequeathed, and do and shall invest the residue of my personal estate in the purchase of lands in England or Wales, but not in Ireland, being freeholds or copyholds of inheritance or leasehold held for sixty years or more at the time of purchase: AND I DECLARE that the lands so purchased and the residue of my said personal estate for the time being as yet not invested in such purchase shall be held by my said trustees or trustee for the benefit of the same persons successively in the same manner, and to, for, and on the same uses, estates, and interests, and with and subject to the same powers and provisions as my real estate hereinbefore devised, or upon trusts and with and subject to powers and provisoes as nearly corresponding thereto as the nature and quality of the property will permit: I DECLARE that *E. F.*, *G. H.* and *J. K.*, or other the trustees or trustee for the time being of this my will, shall be trustees of the settlement hereby created for all purposes of the Settled Land Act, 1882, and I appoint *E. F.*, *G. H.* and *J. K.* to be the executors of this my will. IN WITNESS, &c.

**Devise in  
strict  
Settle-  
ment.**

---

Appoint-  
ment of  
trustees  
and exe-  
cutors.



Devise of  
Land on  
Trust for  
Sale.

VI. SETTLEMENT *by WILL of LAND by way of TRUST for SALE; TRUSTS for benefit of WIDOW and ISSUE; INVESTMENT clause; POWER to invest in PURCHASE of LAND; PROVISIO that SOLICITOR trustee may CHARGE for COSTS.*

Revoca-  
tion of  
prior wills.  
Bequest to  
wife of  
apparel,  
plate, &c.,

and of  
pecuniary  
legacy.

Bequest of  
legacies.  
General  
devise of  
real estate  
in trust  
for sale.

Power for  
trustees  
for sale to  
sell by  
auction,  
&c.

I, *A. B.* of &c., hereby revoke all wills and testamentary dispositions heretofore made by me, and declare this to be my last will: I BEQUEATH to my wife *C. B.* all my watches, jewels, personal ornaments and apparel, plate, linen, china, glass, books, pictures, prints, wines, liquors, provisions, furniture and other household effects, and my horses, carriages and harness: AND I ALSO BEQUEATH to her the sum of £ , to be paid to her within one calendar month after my decease. I BEQUEATH the following legacies, that is to say [*legacies*]: I DEVISE all my lands at , in the county of , and all other my real estate (except what I otherwise devise by this my will, or any codicil thereto) unto and to the use of *E. F.* of &c., *G. H.* of &c., and *J. K.* of &c., their heirs, executors and administrators respectively, according to the nature and tenure thereof, UPON TRUST to sell the same (*r*): I BEQUEATH all

(*r*) A simple direction to the trustees is now sufficient. Trustees for sale have now under sect. 35 of the Conveyancing Act, 1881, power either by auction or private contract, &c.

“(1) Where a trust for sale or a power of sale of property is vested in trustees, they may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title, or other matter as the trustees think fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.

“(2.) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust



my personal property (except chattels real included in the devise hereinbefore contained of my real estate, and also except what I otherwise bequeath by this my will, or any codicil thereto) unto *E. F.*, *G. H.*, and *J. K.*, their executors and administrators, upon trust to call in, sell and convert into money such part of my personal estate as shall not consist of money: AND I DECLARE that the trustees or trustee for the time being of this my will do and shall out of the moneys to arise from the sale of my real estate, and from the calling in, sale and conversion into money of such part of my personal estate as shall not consist of money, and the money of which I shall be possessed at my death, pay my funeral and testamentary expenses and debts, and the pecuniary legacies bequeathed by this my will or any codicil hereto; AND DO AND SHALL invest the residue of the said moneys in their or his names or name in the purchase of any parliamentary stock or funds of the United Kingdom, or in the purchase of any stock secured upon the revenues of British India, or in the purchase of stock in the Bank of England or Ireland (*s*), or any of the British colonies or dependencies, or in the purchase of the debenture stock or preference stock or preference shares of any railway or other company in Great Britain incorporated or established by charter

**Devise of  
Land on  
Trust for  
Sale.**

General bequest of personal estate in trust for conversion.

Trusts of proceeds of sale and conversion for payment of funeral expenses, &c.,

and for investment of the residue, with power to vary investments;

or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

“(3) This section applies only to a trust or power created by an instrument coming into operation after the commencement of this Act.”

(*s*) Trustees have, under 22 & 23 Vict. c. 35, s. 30, power to invest in bank stock and real securities in Ireland, unless such investment is expressly forbidden by the instrument creating the trust.

**Devise of  
Land on  
Trust for  
Sale.**

---

or act of parliament and in actual work, and which shall during the three preceding years have paid a dividend of not less than 2½ per cent. on its original stock, or of any East India railway, the dividends of which shall be guaranteed by or out of the revenues of British India, or at interest upon Government or real or long leasehold securities in Great Britain (but not in Ireland (t)), or in or upon the bonds or securities of any of the British colonies or dependencies, including bonds or debentures secured upon or guaranteed by the revenues of British India, or any bonds or securities, which, or the interest of which, are or is guaranteed by the Government of the United Kingdom, or at interest upon the debentures or mortgages of any company incorporated or established in Great Britain by charter or act of parliament, and paying a dividend as aforesaid, and not being a company having the liability of its members limited by the provisions of the Companies Act, 1882, or any other act relating to joint-stock companies, or upon the security of a life interest in any such real or personal property as aforesaid, coupled with a policy of assurance on the life of the person on whose death such life interest will determine, and do and shall from time to time alter, vary and transpose the said stocks, funds, shares and securities into or for other stocks, funds, shares or securities of the same or a like nature; AND DO AND SHALL pay the annual income of the trust properties, and of the moneys, stocks, funds, shares and securities into which the same

for pay-  
ment of in-  
come to  
testator's

(t) See note (s), ante, p. 297.

or any of them, or any part thereof respectively, may be converted or transposed (and all which trust properties and premises are hereinafter referred to as the trust funds), to my wife so long as she shall continue my widow, and after her death or marriage do and shall hold the trust funds, IN TRUST for all and every, or such one or more exclusively of the others or other of my issue, upon such conditions and in such manner as my wife shall by deed, will or codicil appoint, AND IN DEFAULT of such appointment, and so far as no such appointment shall extend, in trust for all my children or any my child, who being sons or a son, shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, and if more than one, in equal shares: PROVIDED ALWAYS, that no child to whom or whose issue any part of the trust funds shall have been appointed under the power hereinbefore contained shall be entitled to participate in the unappointed part of the same funds without bringing the part appointed to him or her, or his or her issue into hotchpot, and accounting for the same accordingly: PROVIDED ALWAYS, that it shall be lawful for the said trustees or trustee at any time after the decease of my wife, or in her life-time if she shall so direct in writing, to raise any part or parts of the then expectant or presumptive or vested share or shares of any of my issue under the trusts hereinbefore declared, not exceeding in the whole for any such issue one moiety of his, her, or their expectant or presumptive or vested share or shares, and to pay and apply the

**Devise of Land on Trust for Sale.**

wife during widow-hood.

Remainder for testator's issue, as wife shall appoint, in default of appointment for sons at 21, and daughters at 21, or on marriage equally.

Hotchpot clause.

Advance-ment clause.

**Devise of  
Land on  
Trust for  
Sale.**

Trust in  
default of  
children.

Power for  
trustees to

Applica-  
tion by  
trustees of  
income of  
property  
of infant  
for main-  
tenance,  
&c.

same for his, her, or their preferment, advancement or benefit in such manner as my wife during her life shall direct, and after her death as my said trustees or trustee shall in their or his discretion think fit (u). AND if there shall be no child of mine living at my death, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then after the death or marriage of my wife, and such default or failure of children, I BEQUEATH the trust funds, or so much thereof as shall not have become vested or been applied under the trusts aforesaid unto, &c.: PROVIDED ALWAYS, and I hereby declare, that my

(u) The necessity of inserting powers of applying the trust property for maintenance and education of the issue and of accumulating the unapplied residue, is done away with by the following provisions of the Conveyancing, &c. Act, 1881:—

43.—(1.) Where any property is held by trustees in trust for an infant, either for life, or for any greater interest, and whether absolutely, or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose or any person bound by law to provide for the infant's maintenance, or education, or not.

(2.) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise; but so that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies whether that instrument comes into operation before or after the commencement of this Act.

said trustees or trustee may postpone the sale and conversion of my real and personal estate, or any part thereof, so long as they shall think fit, but my real estate shall be considered as personalty ; AND I declare that my trustees or trustee may let any lands for the time being remaining unsold either from year to year, or for any term of years not exceeding twenty-one years, at such rents, and subject to such conditions, as they or he shall think fit, and may accept surrenders of leases or tenancies, and may cut timber and other trees growing on such lands for repairs, or sale, or otherwise, and generally may manage the said lands, and the proceeds of any timber cut and sold shall go as rents and profits : AND I hereby declare that it shall be lawful for my said trustees or trustee, upon the request in writing of my wife during her life, and, after her death, at their or his discretion, to lay out any part of the trust funds in the purchase, for the purpose of a residence, or by way of investment, of any freehold, copyhold or customary or leasehold messuages, dwelling-houses, or other hereditaments in England, Wales or Ireland, but so that, in the case of leaseholds, there shall at the time of the purchase be at least an unexpired term of seventy years therein, Upon trust, nevertheless, upon such request or at such discretion as aforesaid, to resell the hereditaments and premises which may be so purchased in such manner as they or he shall think fit, and to stand possessed of the clear proceeds of such resale, upon and subject to the same trusts as the money laid out in such purchase

**Devise of  
Land on  
Trust for  
Sale.**

postpone  
sale, &c.

Power to  
invest per-  
sonalty in  
purchase of  
land.

Devise of  
Land on  
Trust for  
Sale.

---

would have been subject if the same had not been made, the income of the property purchased being applied in the meantime as the income of the money laid out in such purchase would have been if not so laid out, and the property purchased being to all intents and purposes to be considered as money: AND I FURTHER DECLARE, that it shall be lawful for my said trustees or trustee to demise or lease as aforesaid the property which may be so purchased until resold in such manner as they or he may think proper nevertheless in the life of my wife with her consent in her writing (v): PROVIDED ALWAYS, and I expressly declare, that the fact of any trustee for the time being of this my will being a solicitor shall not prevent him from acting as solicitor for the purpose of transacting the legal professional business incidental to or necessary for carrying into effect the trusts, powers and provisions hereinbefore contained, or from charging and being entitled to be paid the usual and accustomed costs and charges, as between solicitor and client, for all business by him transacted in relation to the trusts, estates and premises, notwithstanding any rule of law or equity to the contrary: I APPOINT *E. F.*, *G. H.*, and *J. K.* to be the executors of this my will, and I appoint my wife and *E. F.*, *G. H.*, and *J. K.* guardians of my infant children. IN WITNESS, &c.

Clause  
enabling a  
trustee  
who is a  
solicitor to  
act and  
charge his  
costs.

Consent  
of tenant  
for life.

(v) This devise in trust for sale being a "settlement" within the meaning of the Settled Land Act, 1882 (see *ante*, p. 115), the consent of the tenant for life would be necessary to any exercise by the trustees of the powers of leasing, &c.

Devise of  
trust es-  
tates, &c.

There is now no necessity to insert a devise of trust on mortgage estates (see *Conv. Act*, s. 30). Such a devise would be inoperative.

## SECTION II.

CONVEYANCES BY TENANTS FOR  
LIFE, &c.

VII.—CONVEYANCE *in fee by way of sale of a close of LAND under the Settled Land Act, 1882.*

Convey-  
ance by  
way of  
Sale of a  
Close of  
Land.

THIS INDENTURE made, &c. BETWEEN *A. B.*, of &c. [*tenant for life in possession*] of the one part, and *C. D.* of &c. [*purchaser*] of the other part: WHEREAS under or by virtue of the will of *E. B.*, of &c., dated the       day of       , and proved in the Principal Registry of Her Majesty's Court of Probate on the       day of       , *A. B.* is now seised of or otherwise well entitled to the hereditaments hereinafter expressed to be conveyed respectively for an estate for his life in possession, with divers remainders over: AND WHEREAS *A. B.* has contracted with *C. D.* for the absolute sale to him of the hereditaments hereinafter expressed to be hereby granted, and the inheritance thereof in fee simple in possession free from incumbrances, for the sum of £       : AND WHEREAS, according to the direction of *A. B.* on the       day of       , *C. D.* paid into Court (*a*) to the credit of ex parte *A. B.* in the matter of the Settled Land Act, 1882, the sum of £       , as *A. B.* doth hereby acknowledge: NOW THIS INDENTURE WITNESSETH

Parties.

Recital of  
seisin,

of contract  
for sale,

of pay-  
ment of  
purchase-  
money into  
Court.

Wit-  
nesseth.

(a) Payment into Court is a sufficient discharge for the purchase-money (see *ante*, p. 90).

Convey-  
ance by  
way of  
Sale of a  
Close of  
Land.

Convey-  
ance (x).  
Parcels.

Haben-  
dum.

Under-  
taking to  
produce  
deeds.

that for the purpose of carrying into effect the said contract, and in consideration of the sum of £           , paid by *C. D.* into Court as aforesaid, *A. B.* as beneficial owner, and in exercise and execution of the power vested in him under or by virtue of the Settled Land Act, 1882, and of all other powers and authorities in anywise him enabling in this behalf, hereby conveys to *C. D.* ALL THAT piece or parcel of meadow or pasture land, commonly known as            close, situate in the parish of            in the county of           , and containing by admeasurement            acres, roods, and            perches, or thereabouts, and bounded on the north by land of *E. F.*, and on the            by the road from *X.* to *Y.*, and on the other sides thereof by land of *G. H.*, which piece or parcel of land is in the occupation of *J. K.* as yearly tenant, and is delineated in the map or plan drawn in the margin of these presents, and therein coloured *red*, To HOLD to and to the use of *C. D.* in fee simple; AND *A. B.* hereby acknowledges the right of *C. D.* to the production of the documents of title mentioned in the schedule hereunder written, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof. IN WITNESS, &c.

*The SCHEDULE above referred to.*

(x) See sect. 20 of the Settled Land Act, 1882, *ante*, p. 47, as to the effect of a conveyance under the Act in passing the land conveyed, and discharging it from the limitations of the settlement, &c.



**Convey-  
ance of a  
Farm  
sold by  
Auction.**

of death of  
testator,  
of sale by  
auction,

Convey-  
ance of a  
Farm  
sold by  
Auction.

of valua-  
tion of  
timber and  
fixtures,

of pay-  
ment into  
Court of  
purchase-  
money.

Wit-  
nesseth.

Convey-  
ance.

for sale by public auction on the       day of       ,  
the third lot comprising the farmhouse and here-  
ditaments hereinafter expressed to be hereby con-  
veyed, and at the said sale *E. F.* was declared the  
purchaser of the hereditaments comprised in the  
third lot at the price of 2,000*l.*, and immediately  
after the sale *E. F.* paid the sum of 200*l.* into the  
hands of the auctioneer on account of *A. B.* by way  
of deposit, and in part payment of the sum of  
2,000*l.* : AND WHEREAS it was a condition of the  
sale that every purchaser should, in addition to the  
amount of his bidding, take the timber and fix-  
tures at a fair valuation : AND WHEREAS the  
timber and fixtures on and in the third lot have  
been valued at the sum of 180*l.* accordingly :  
AND WHEREAS *C. D.*, being satisfied that his  
mortgage debt is otherwise sufficiently secured,  
has agreed to join in these presents in manner  
hereinafter appearing : AND WHEREAS, by the  
direction of *A. B.*, the sum of 200*l.*, paid as  
hereinbefore mentioned, and also the sums of  
1,800*l.* and 180*l.*, making together the sum of  
2,180*l.*, have been paid into Court by or on  
behalf of *E. F.* to the credit of *Ex parte A. B.* in  
the matter of the Settled Land Act, 1882, as *A. B.*  
doth hereby acknowledge ; Now THIS INDENTURE  
WITNESSETH, that for the purpose of effectuating  
the said sale, and in consideration of the sum of  
2,180*l.* so paid by or on behalf of *E. F.* into Court  
as aforesaid, *A. B.*, as beneficial owner and in  
exercise, &c. [*as in the last precedent*], hereby con-  
veys, AND *C. D.*, as mortgagee, for the purpose of  
signifying his consent to the sale and exonerating

the land sold and hereby expressed to be conveyed from his mortgage debt, hereby conveys and releases ALL THAT messuage or farmhouse and farm, with the farm-buildings, closes and pieces or parcels of land thereto belonging, known as the

Convey-  
ance of a  
Farm  
sold by  
Auction.  
—  
Parcels

Farm, situate in the parish of , in the county of , and containing by admeasure-  
ment acres, roods and perches, or thereabouts, and all which pieces or parcels of land are more particularly described in the first schedule hereunder written and delineated in the map or plan drawn in the margin of these presents, and therein coloured , such schedule and map being respectively extracts from the apportionment of tithe commutation rent-charge for the parish of and from the map referred to in the same apportionment, To HOLD the premises to and to the use of E. F. in fee simple, free and exonerated from all principal moneys and interest owing upon or intended to be secured by the said indenture of the day of , and from all claims and demands under or in respect of the same (a).

IN WITNESS, &c.

[The SCHEDULE above referred to.]

IX. CONVEYANCE by way of SALE of a large SETTLED ESTATE, including the MANSION HOUSE and DEMESNES, under an ORDER of the COURT.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [tenant for life], and C. D., of &c. [purchaser],

Convey-  
ance by  
way of  
Sale of  
Mansion  
House and  
Estate.  
—  
Parties.

(a) For undertaking to produce deeds, see ante, p. 304.

Convey-  
ance by  
way of  
Sale of  
Mansion  
House and  
Estate.

Recitals,  
of seisin,  
of con-  
ditional  
contract  
for sale,

of order  
of the  
Court,

of the other part : WHEREAS [*recite the settlement so far as necessary to show the seisin of the tenant for life*] : AND WHEREAS by a contract dated &c., and expressed to be made between *A. B.* of the one part, and *C. D.* of the other part, *A. B.* agreed with *C. D.* that if he should be authorized by an order of the Chancery Division of the High Court of Justice under the Act of the 45th and 46th years of Her Majesty's reign, intituled The Settled Land Act, 1882, he would sell to *C. D.* the mansion house, park, demesnes, and other lands usually occupied therewith, together with other lands and hereditaments hereinafter expressed to be hereby conveyed, free from incumbrances, for the sum of £ : AND WHEREAS by an order of the Chancery Division of the High Court of Justice, made on the      day of      by Sir      , one of the justices of the said division, in the matter of the said Act, and in the matter of the settled lands situate in the several parishes of      , and      , in the county of      , devised by the will of *E. B.*, deceased [*or as the case may be*], upon the application of *A. B.*, the Court deeming it proper and consistent with a due regard to the interests of all parties entitled under the settlement created by the said will, that the mansion house, park and the demesnes, and other lands usually occupied therewith, should be sold together with the other hereditaments comprised in the said contract under the provision in that behalf contained in the Act hereinbefore mentioned, and that the said contract should be carried into effect, subject to the provisions of the said Act, it was ordered that the same be carried into effect subject to the provisions

in the said Act contained: AND it was ordered that *C. D.* should pay the sum of £      into Court to the credit of *Ex parte A. B.* in the matter of the Settled Land Act, 1882: AND it was ordered that *A. B.* should execute the deed or deeds of conveyance or other assurance as well of the said mansion house, park, demesnes, and other lands usually occupied therewith, as of the other hereditaments comprised in the said contract: AND WHEREAS, in pursuance of the said order, and on the      day of      , *C. D.* paid into Court to the credit of *Ex parte A. B.* in the matter of the Settled Land Act, 1882, the sum of £      , as *A. B.* doth hereby acknowledge; Now THIS INDENTURE WITNESSETH, that for the purpose of carrying into effect the said contract, and in pursuance of the said order of Court, and in consideration of the sum of £      paid by *C. D.* into Court as aforesaid *A. B.* as beneficial owner hereby conveys to *C. D.* ALL THAT mansion house called      Hall, with the gardens, pleasure grounds, demesnes and other lands usually held therewith, AND ALSO ALL other the lands and hereditaments situate in the parish of      , in the county of      , containing altogether      acres or thereabouts, and all which premises are particularly described in the schedule hereunder written, and are delineated in the map drawn in the margin of these presents and therein coloured      , To      hold the premises unto and to the use of *C. D.* in simple. IN WITNESS, &c.

Convey-  
ance by  
way of  
Sale of  
Mansion  
House and  
Estate.

of pay-  
ment into  
Court of  
purchase-  
money.

Wit-  
nessest.

Convey-  
ance.  
Parcels.

Haben-  
dum.

[The SCHEDULE above referred to.]

Building  
Grant.

X. CONVEYANCE *by way of sale of SETTLED LAND sold for BUILDING purposes*; GRANT of RIGHTS of WAY over unsold parts of the settled land; The TRUSTEES of the SETTLEMENT join in the conveyance for the purpose of giving a RECEIPT for the purchase-money.

Parties.

THIS INDENTURE made the            day of  
BETWEEN *A. B.* of &c. [*tenant for life*] of the first  
part, *C. D.* of &c. and *E. F.* of &c. [*trustees of the  
settlement*] of the second part, and *G. H.* of &c.  
[*purchaser*] of the third part: WHEREAS under  
or by virtue of the will of *W. B.*, late of &c., de-  
ceased, dated &c., and proved &c., *A. B.* is seised  
of or entitled as tenant for life in possession to  
(amongst other hereditaments) the hereditaments  
hereinafter described and expressed to be first  
hereby conveyed: AND WHEREAS *C. D.* and *E. F.*  
are the trustees of the settlement created by the  
said will, within the meaning of the Settled Land  
Act, 1882: AND WHEREAS *A. B.* has contracted  
with *G. H.* for the sale to him of the heredita-  
ments hereinafter described and expressed to be  
first hereby conveyed, and also of the rights of  
way hereinafter described and expressed to be  
severally hereby conveyed over other hereditaments  
comprised in the said will, for the sum of £        ,  
to be paid to the trustees of the settlement upon  
the execution of these presents, subject never-  
theless as is hereinafter mentioned; Now THIS  
INDENTURE WITNESSETH, that for effectuating  
the said contract, and in consideration of the  
sum of £        upon the execution of these pre-

Recitals  
of will  
creating  
the settle-  
ment,of contract  
for sale.Wit-  
nesseth.

sents paid by *G. H.* to *C. D.* and *E. F.* by the direction (hereby testified) of *A. B.* (the receipt whereof *C. D.* and *E. F.* do hereby acknowledge), *A. B.* in exercise of the power in that behalf given to him by the said Settled Land Act, or of any other power whatsoever, hereby conveys unto *G. H.*, FIRST, ALL THAT piece or parcel of building land, situate, &c. [*parcels*], which piece of land first hereinbefore expressed to be hereby conveyed is delineated with the abuttals on the plan drawn in the margin of these presents, and therein coloured red, AND SECONDLY, full and free right and liberty for *G. H.*, his heirs and assigns, and his and their agents, servants and workmen, and the tenants and occupiers for the time being of the hereditaments and premises first hereinbefore expressed to be hereby conveyed, or of any buildings to be erected thereon, at all times hereafter at his and their will and pleasure, by night or by day, and for all purposes, to go and return, pass and repass, with or without horses and other animals, carts, waggons and carriages of every description, laden or unladen, and also to drive all manner of beasts and cattle whatsoever in, along, over or through the several roads intended to be made as is hereinafter mentioned (that is to say), first, a road coloured brown on the said plan, being a road intended to be made of                      feet wide from a point marked *A* on the said plan, over certain closes of land comprised in the said will, and adjoining the easterly side of the hereditaments first hereinbefore expressed to be hereby conveyed, to the high road

**Building  
Grant.**

---

Convey-  
ance of  
building  
land,

of rights  
of way.

**Building  
Grant.**

Haben-  
dum.  
Subject to  
conditions  
in inden-  
ture of  
even date.

Right of  
way to be  
enjoyed  
by vendor  
and pur-  
chaser in  
common.

leading from Y to Z at the point marked B on the said plan; and, secondly, a road coloured yellow on the said plan, being a road intended to be made &c.; but so, nevertheless, that *G. H.* shall make good all unnecessary damage to the lands, the rights of road over which are hereby granted as aforesaid, To HOLD the premises unto and to the use of *G. H.* in fee simple, SUBJECT, NEVERTHELESS, to the covenants, restrictions, conditions and stipulations contained in an indenture of even date with these presents, and expressed to be made between *G. H.* of the one part, and *A. B.* of the other part: AND IT IS HEREBY AGREED and declared that the several rights of road secondly hereinbefore expressed to be hereby conveyed shall be used and enjoyed by *G. H.*, his heirs and assigns, in common with *A. B.*, his heirs and assigns, and that the expense of making good and substantial roads along and over the said roadways, and of maintaining the same in repair (until the same shall be respectively dedicated to the public use), shall be borne by *G. H.*, his heirs and assigns, and *A. B.*, his heirs and assigns, in equal shares. IN WITNESS, &c.

**Deed of  
Dedica-  
tion.**

XI. DEED of DEDICATION for Streets, Open Spaces, &c., accompanying the last Precedent (a).

**Parties.**

THIS INDENTURE made the            day of            ,  
BETWEEN *G. H.*, of &c. [*purchaser*] of the one

(a) As to provisions in the Settled Land Act, 1882, with regard to dedication of land for streets, open spaces, &c., see *ante*, p. 44.



part, and *A. B.*, of &c. [*tenant for life*], of the other part: WHEREAS by an indenture of even date with these presents, and expressed to be made between *A. B.* of the first part, *C. D.* and *E. F.* of the second part, and *G. H.* of the third part, in consideration of £        paid by *G. H.* to *C. D.* and *E. F.* as trustees within the meaning of the Settled Land Act, 1882, of a settlement created by the will of *W. B.*, of &c, deceased, by the direction of *A. B.* as tenant for life under the same settlement, ALL that piece or parcel of land situate, &c. [*parcels as in last Precedent*] were conveyed by *A. B.*, as such tenant for life as aforesaid, unto and to the use of *G. H.* in fee simple, subject nevertheless to the covenants, restrictions, conditions and stipulations contained in an indenture therein referred to of even date therewith, being these presents; Now THIS INDENTURE WITNESSETH, that in consideration of the premises, *G. H.* doth hereby covenant with *A. B.* that he *G. H.* will forthwith appropriate and lay out, and for ever hereafter continue appropriated and laid out, the        several new streets along and over the hereditaments so conveyed to him as aforesaid, which new streets are respectively delineated in the plan drawn in the margin of these presents and therein coloured brown, AND THAT he will for ever keep the said intended new streets open and not built upon, AND THAT he will forthwith construct or cause to be constructed common sewers or drains along and under each of the said roads or streets hereby covenanted to be appropriated for the use of the tenants or occupiers

Deed of  
Dedica-  
tion.

Recital.

Convey-  
ance of  
building  
land.

Wit-  
nesseth.

Covenant  
to appro-  
priate new  
streets,

to con-  
struct  
sewers,

**Deed of  
Dedica-  
tion.**

to main-  
tain in  
repair  
streets, &c.

of the houses intended to be built upon the hereditaments hereinbefore recited to have been conveyed as aforesaid, AND will maintain and keep in repair the said streets when so laid out, and the said common sewers or drains when so constructed as aforesaid, until the said streets and sewers or drains shall be taken over to be respectively maintained and kept in repair by the majority of owners of property in the said streets, or until the same shall respectively become maintainable by some public corporation or body. IN WITNESS, &c.

**Deed of  
Enfranchi-  
sement.**

**XII.—ENFRANCHISEMENT** *by a* TENANT FOR LIFE, LORD of a SETTLED MANOR, *the* TRUSTEES of *the settlement joining in order to give* RECEIPTS.

Parties.

THIS INDENTURE made the            day of            ,  
BETWEEN *A. B.* [*tenant for life*], of &c., of the first  
part, *C. D.*, of &c., and *E. F.*, of &c. [*trustees of the*  
*settlement*], of the second part, and *G. H.*, of &c.  
[*copyholder*], of the third part: WHEREAS, under or  
by virtue of an indenture of settlement dated &c.,  
and expressed to be made between [*parties*], and  
other assurances, *A. B.* is now entitled as tenant for  
life in possession to (amongst other lands and hereditaments thereby settled) the manor of            , in  
the county of            , and the freehold and inheri-  
tance of the copyhold and customary lands, parcel  
of the said manor, And *C. D.* and *E. F.* are the  
present trustees of the settlement within the mean-  
ing of the Settled Land Act, 1882: AND WHEREAS  
at a Court holden for the said manor on the

Recitals,  
of settle-  
ment,

of admit-  
tance,

day of \_\_\_\_\_, *G. H.* was admitted to the copyhold hereditaments to the copyhold lands described in the first schedule hereunder written, and is seised in fee simple in possession of the customary lands held of the said manor described in the second schedule hereunder written: AND WHEREAS *A. B.* has agreed with *G. H.* for the enfranchisement of the said copyhold and customary lands for the sum of £ \_\_\_\_\_, to be paid to *C. D.* and *E. F.* as such trustees as aforesaid; NOW THIS INDENTURE WITNESSETH, that for the purpose of effecting such enfranchisement, and in consideration of £ \_\_\_\_\_, upon the execution of these presents paid by *G. H.* at the request and by the direction of *A. B.* to *C. D.* and *E. F.* (the receipt whereof they hereby acknowledge), *A. B.* in exercise of the power in that behalf given to him by the said Settled Land Act, or of any other power whatsoever, hereby as beneficial owner conveys, enfranchises, and releases unto *G. H.*, FIRST, ALL those copyhold lands and hereditaments of the manor of \_\_\_\_\_ aforesaid, to which *G. H.* was admitted as aforesaid, and which are more particularly described in the first schedule hereunder written, AND SECONDLY all those customary lands and hereditaments of the said manor, and which last-mentioned lands and hereditaments are more particularly described in the second schedule hereunder written, EXCEPTING and always reserved unto *A. B.* and his heirs all mines, minerals and quarries, whether opened or in work or not, in, on or under the lands and premises hereinbefore expressed to be hereby enfranchised,

Deed of  
Enfranchisement.

---

of agreement to enfranchise.

Witnesseth.

Enfranchisement.  
Parcels.

Reservation of  
mines, &c.,

**Deed of  
Enfranchisement.**

and liberty  
to work,  
&c.

or any part thereof, Together with full and free liberty and power to and for *A. B.* and his heirs, and his and their agents, workmen and others, by his and their authority, with or without horses, carts and other carriages, and all necessary implements and materials, at all times to enter into and upon the premises hereinbefore expressed to be hereby enfranchised, or any part thereof, and to sink any pit or shaft therein, and to make, erect and construct therein or thereon any rail or other ways, roads, buildings, and engineering or other works, for the purpose of sinking, searching for, winning, working, getting, making merchantable, smelting, or otherwise converting or working, carrying away and disposing of, any mines and minerals in or under the premises hereinbefore expressed to be hereby enfranchised, or any part thereof, or any adjoining or neighbouring mines or quarries, without paying any compensation for any unavoidable damage to be done or occasioned thereby, except that *A. B.* and his heirs shall make compensation to *G. H.* and his assigns for all damages to be done or occasioned in or by the making of any pit or shaft or way, and the construction of any such buildings or works as aforesaid, in or after the rate of                      for every superficial square yard of land for a year, and so in proportion for any greater or less quantity than a yard, or for any longer or shorter time than a year, AND ALSO excepting and reserved unto *A. B.* and his heirs full and free liberty and power at all reasonable times, with or without agents, surveyors or workmen, to enter into and

upon the premises hereinbefore expressed to be hereby enfranchised, or any part thereof, in order to inspect the state and condition of any mines or minerals therein or thereon respectively, To HOLD the said premises hereinbefore expressed to be hereby enfranchised (excepting and reserved as aforesaid) unto and to the use of *G. H.* in fee simple as freehold henceforth and for ever discharged from fines, heriots, quit-rents and all other incidents whatsoever of copyhold or customary tenure: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, *A. B.* as beneficial owner (so far as he lawfully may or can) hereby conveys and grants unto *G. H.* ALL rights of common and other rights, easements and privileges (excepting and reserved as aforesaid) heretofore appendant or appurtenant to or held or enjoyed with the lands and premises hereinbefore expressed to be hereby enfranchised or reputed so to be, To HOLD unto and to the use of *G. H.* in fee simple. IN WITNESS, &c.

Deed of  
Enfranchi-  
sement.

Haben-  
dum.

Wit-  
nesseth.  
Re-grant  
of common  
rights.

Haben-  
dum.

XIII. CONVEYANCE of FREEHOLDS to trustees to  
the USES of a SETTLEMENT in EXCHANGE for  
SETTLED LANDS conveyed by the TENANT FOR  
LIFE by a deed of even date.

Deed of  
Exchange

THIS INDENTURE made between *A. B.*, of &c., Parties.  
of the first part, *C. D.*, of &c. [*tenant for life*], of  
the second part, and *E. F.* and *G. H.* [*trustees of*  
*the settlement*]: WHEREAS *A. B.* is seised of the Recitals:  
lands and hereditaments described in the first Seisin of  
grantor.

**Deed of  
Exchange**Seisin of  
tenant  
for life  
(grantee).Agree-  
ment for  
exchange.Convey-  
ance of  
land given  
in ex-  
change.

schedule hereunder written for an estate in fee simple in possession free from incumbrances : AND WHEREAS by an indenture dated the            day of            and expressed to be made between [*parties*], being a settlement made in consideration of the marriage afterwards solemnized between *C. D.* and *J. D.*, the lands and hereditaments described in the second schedule hereunder written were limited and assured from and after the solemnization of the marriage to the use of *C. D.* for his life, with divers remainders over : AND WHEREAS, *E. F.* and *G. H.* are the present trustees of the settlement within the meaning of the Settled Estates Act, 1882 : AND WHEREAS it has been agreed by and between the parties hereto that *A. B.* should convey the hereditaments described in the first schedule hereunder written in fee simple in possession free from incumbrances unto *E. F.* and *G. H.*, in manner hereinafter appearing, in consideration of the conveyance by *C. D.*, as such tenant for life as aforesaid, of the hereditaments described in the second schedule hereunder written (being part of the settled land comprised in the said settlement), and in further consideration of the sum of £            to be paid for equality of exchange to *A. B.* by *E. F.* and *G. H.* out of moneys in their hands, being capital money arising under the said Settled Land Act : AND WHEREAS, in pursuance and part performance of the said agreement, by an indenture bearing even date with these presents and expressed to be made between *C. D.*, of the one part, and *A. B.*, of the other part, *C. D.*, in exercise of the power in

that behalf given to him by the said Settled Land Act, conveyed unto and to the use of *A. B.* in fee simple in possession free from incumbrances the hereditaments described in the second schedule hereunder written, as *A. B.* doth hereby acknowledge; Now THIS INDENTURE WITNESSETH, that in further pursuance of the said agreement, and in consideration of the premises, and in further consideration of the sum of £            upon the execution of these presents paid to *A. B.* by *E. F.* and *G. H.*, with the consent (hereby testified) of *C. D.* (the receipt of which sum *A. B.* hereby acknowledges), *A. B.*, as beneficial owner, conveys unto *E. F.* and *G. H.* ALL those lands and hereditaments situate at           , in the county of           , and which are particularly described in the first schedule hereunder written, To HOLD the premises hereinbefore expressed to be hereby conveyed unto *E. F.* and *G. H.* in fee simple, TO SUCH OF THE USES, upon and for such of the trusts, and with, under and subject to such of the powers, provisions and declarations in and by the said indenture of settlement expressed, declared and contained of and concerning the lands and hereditaments therein comprised as are now subsisting or capable of taking effect. IN WITNESS, &c.

**Deed of  
Exchange**

Wit-  
nesseth.

Convey-  
ance.

Haben-  
dum.

To uses of  
the settle-  
ment.



Partition  
Deed.

XIV. CONVEYANCE *by way of* PARTITION *where* TWO FEMALES, *one of whom is an* INFANT, *are entitled to the* SETTLED LANDS *as* TENANTS *in common* IN TAIL.

Parties.

THIS INDENTURE, made the            day of            , 18    , BETWEEN *A. B.*, of &c. [*one of the tenants in tail*], of the first part, *E. F.*, of &c., and *G. H.*, of &c. [*trustees of the settlement*], on behalf of *C. B.*, of &c. [*the other tenant in tail*], an infant, of the second part, and *X. Y.* [*grantee to uses*], of the third part: WHEREAS by an indenture of

Recitals:

Settle-  
ment.

settlement, dated the            day of            , and expressed to be made between [*parties*] (being a settlement made in consideration of the marriage afterwards solemnized between *J. B.* and *K. B.* [*his wife*]), the lands and hereditaments herein-after described were settled to the uses therein mentioned until the solemnization of the marriage, and thereafter to the use of *J. B.* during his life without impeachment of waste, with remainder to the use that *K. B.*, if she should survive him, might receive a yearly rent-charge of £            , as therein mentioned, and subject thereto to the use of *E. F.* and *G. H.* for a term of 500 years on the trusts therein declared for securing the said rent-charge, and subject thereto to the use of the first and other sons of *J. B.* and *K. B.* successively in tail male, with remainder to the use of the same first and other sons successively in tail, with remainder to the use of all the daughters of *J. B.* and *K. B.* in equal shares as tenants in common in tail, with remainders over, And in the Indenture now in recital was limited to *E. F.* and *G. H.* a power of sale of the settled land as therein



mentioned (b); AND WHEREAS the said *J. B.* died on the            day of            : AND WHEREAS there have been no sons born of the marriage of *J. B.* and *K. B.*: AND WHEREAS *A. B.* and *C.* are the only daughters of the marriage, of whom *A. B.* attained the age of twenty-one years on the day of            , but *C. B.* is an infant: AND WHEREAS it has been agreed between *A. B.* and *E. F.* and *G. H.* (on behalf of *C. B.*) that such partition shall be effected as is hereinafter contained; NOW THIS INDENTURE WITNESSETH, that, for the purpose of effecting such partition, *A. B.*, so far as regards and as beneficial owner of her moiety of the hereditaments described in the schedule hereunder written, and *E. F.* and *G. H.*, so far as regards and as trustees of the moiety of *C. B.* of the same hereditaments, hereby convey unto *X. Y.* ALL [*parcels by reference to a schedule*], To HOLD unto *X. Y.* in fee simple, as to the hereditaments comprised in the first part of the schedule, To THE USE of *A. B.* in tail, and as to the hereditaments comprised in the second part of the schedule, To THE USE of *C. B.* in tail, with remainder as to entirety of the said hereditaments TO THE USES declared in the said settlement of and concerning the same subsequent to the limitation thereof to the use of all the daughters of the said marriage as tenants in common in tail. IN WITNESS, &c.

Partition  
Deed.

Condition  
of the  
family.

Agree-  
ment for  
partition.

Wit-  
nesseth.

Convey-  
ance.  
Haben-  
dum.

As to one  
part to the  
use of one  
tenant in  
common,  
and as to  
the other  
moiety to  
the use of  
the other  
tenant in  
common,  
remainder  
to subse-  
quent uses  
of the set-  
tlement.

[*The SCHEDULE above referred to.*]

(b) Trustees with powers under a settlement of sale of the settled land are trustees of the settlement within the meaning and for the purposes of the Settled Land Act, 1882 (see *ante*, p. 20).

**Statutory  
Grant of  
Site for  
Place of  
Worship.**

---

**XV. STATUTORY FORM of GRANT by a LIMITED OWNER under the PLACES OF WORSHIP ACT, 1873 (c).**

I [*or We*], under the authority of an Act passed in the thirty-sixth and thirty-seventh years of her Majesty Queen Victoria, intituled, "An Act to afford further facilities for the Conveyance of Land for Sites for Places of Religious Worship and for Burial Places," do hereby freely and voluntarily, and without any valuable consideration [*or do, in the consideration of the sum of £        to me or the said        paid*], grant [*alienate*] and convey [*or lease*] to *A. B.*, ALL [*description of the premises*], and all [*my, or our, or the right, title and interest of the*] to and in the same and every part thereof, To HOLD unto and to the use of the said       , and his or their heirs, or executors, or administrators, or successors, for the purposes of the said Act, and to be applied as a site for a place of worship, or for a residence for a minister or ministers officiating in       , or for a burial place, and for no other purposes whatever. [*In case the site be conveyed to trustees, and in cases where the land is purchased, exchanged or demised, usual covenants or obligations for title may be added (d).*] IN WITNESS whereof, &c.

(c) By the 4th section of the Act (36 & 37 Vict. c. 50), in which the above form is set out, it is enacted that "one witness to the execution of the document by each party shall be sufficient, and any assurance under this Act shall be and continue valid if otherwise lawful, although the donor or grantor shall die within twelve calendar months from the execution thereof."

(d) These covenants will not now generally be required. Conv. Act, 1881, s. 7.

XVI. STATUTORY FORM of GRANT by a LIMITED OWNER under the SCHOOLS SITES ACT, 1841 (e).

Statutory  
Grant of  
Site for  
School.

I [or We, as the corporate title of a corporation], under the authority of an Act passed in the year of the reign of her Majesty Queen Victoria, intituled "An Act for affording further facilities for the Conveyance and Endowment of Sites for Schools," do hereby freely and voluntarily, and without any valuable consideration [or do, in consideration of the sum of      to me, or us, or the said paid], grant [alienate] and convey to ALL [description of the premises], and all [my, or our, or the right, title and interest of the      ], to and in the same and every part thereof, To HOLD unto and to the use of the said      , and his or their [heirs, or executors, or administrators, or successors] for the purposes of the said Act, and to be applied as a site for a school for poor persons of and in the parish of      , and for the residence of the schoolmaster [or schoolmistress] of the said school [or for other purposes of the said school], and for no other purpose whatever, such school to be under the management and control of [set forth the mode in which and the persons by whom the school is to be managed, directed and inspected. In case the school be conveyed to trustees, a clause providing for the renewal of the trustees, and in cases where the land is purchased, exchanged or demised, usual covenants or obligations for title may be added (f)]. IN WITNESS whereof, &c.

(e) Only one witness is required. 4 & 5 Vict. c. 38, s. 10.

(f) These covenants will not now generally be required. Conv. Act, 1881, s. 7.

**Mortgage.** XVII. MORTGAGE *by* TENANT *for* LIFE *of* SETTLED LANDS *in* FEE *to* raise money required for enfranchisement; The TRUSTEES joining in order to give RECEIPTS (g).

Parties.	THIS INDENTURE made the            day of            , 18            , BETWEEN <i>A. B.</i> , of &c. [ <i>tenant for life</i> ], of the first part, <i>C. D.</i> of &c., and <i>E. F.</i> , of &c. [ <i>trustees of the settlement</i> ], of the second part, and <i>G. H.</i> , of &c. [ <i>mortgagee</i> ], of the third part, WIT-
Wit- nesseth.	NESSETH, that in consideration of the sum of £            by the direction of <i>A. B.</i> paid to Trustees' receipt. <i>E. F.</i> and <i>G. H.</i> by <i>C. D.</i> (of which sum <i>A. B.</i> , and also <i>C. D.</i> and <i>E. F.</i> as trustees within the meaning of the Settled Land Act, 1882, of a settlement created by the will of <i>X. Y.</i> , de- ceased, dated the            day of            18            , and duly proved, hereby acknowledge the receipt), <i>A. B.</i> hereby covenants with <i>G. H.</i> to pay to him on the            day of            , 18            , the sum of £            , with interest thereon in the meantime at the rate of £            per centum per annum, and also, as long after that day as any principal money remains due under this mortgage, to pay- to <i>G. H.</i> interest thereon at the same rate by

Covenant  
by mort-  
gagor to  
pay prin-  
cipal and  
interest.

(g) This precedent is adapted from the form given in the 4th schedule of the Conveyancing Act, 1881. The trustees are made parties, as under sect. 40 of the Settled Land Act, 1882, *ante*, p. 83, their receipt for the mortgage money discharges a mortgagee from being concerned to see that any money advanced by him is required for any purpose of the Act, or that no more than is wanted is raised. If the money is paid into Court, instead of to the trustees, the only parties to the mortgage will be the tenant for life and the mortgagee; but it will be necessary to recite the settlement, so far as necessary to show the seisin of the tenant for life, and also the purpose for which the advancement is required, *i. e.* enfranchisement or equality of exchange or partition (see Settled Land Act, 1882, s. 18, *ante*, p. 46), and the payment into Court of the mortgage money.





last, for the term of                    years thence next  
ensuing, YIELDING and paying therefor yearly  
during the said term the clear rent of £  
(being the best rent that can reasonably be ob-  
tained for the premises), by equal half-yearly pay-  
ments on the                    day of                   , &c. [*state days  
of payment*], the first of such payments to be made  
on the                    day of                    next, AND *C. D.* cove-  
nants with *A. B.* in manner following, that is to  
say:—that he *C. D.* will during the said term pay  
the rent hereby reserved at the times and in man-  
ner aforesaid, and the tithe commutation, rent  
charge, and all rates, taxes, duties, and assess-  
ments at any time during the said term imposed  
on the premises (except land tax and property  
tax), AND further [*here insert such special covenants  
as shall be agreed upon (k)*]: PROVIDED ALWAYS, that  
if the rent hereby reserved or any part thereof  
shall be unpaid for thirty days after any of the  
days on which the same ought to have been paid  
(although no formal demand shall have been made  
thereof), or in case of the breach of any of the  
covenants herein contained, and on the part of the  
lessee to be observed, then and in every such case  
it shall be lawful for *A. B.*, his heirs or assigns,  
to re-enter on the premises, and thereupon this de-  
mise shall absolutely determine: AND *A. B.*  
hereby covenants with *C. D.* that he, paying the

**Lease of a Farm.**  


---

**Redden-  
dum.**

**Lessee's  
covenants  
to pay  
rent and  
taxes, &c.**

**Proviso for  
re-entry.**

**Lessor's  
covenant  
for quiet  
enjoy-  
ment.**

(k) Special covenants and conditions in agricultural leases vary greatly according to the custom of the district, the nature of the soil, and other circumstances. Several forms of leases will be found in Woodfall's Landlord and Tenant, 12th ed., at pp. 883 *et seq.* See also Dav. Conv., vol. v., pt. 1, pp. 212 *et seq.*; and Prid. Conv., vol. ii., pp. 65 *et seq.*

Lease of a Farm.    rent hereby reserved and performing the covenants hereinbefore contained and on his part to be observed, shall and may peaceably possess and enjoy the demised premises for the term hereby granted without any interruption or disturbance by *A. B.*, his heirs or assigns, or any other person or persons lawfully claiming under him, them, or any of them.    IN WITNESS, &c.



Lease of a House.    XIX. LEASE of a HOUSE by a TENANT for LIFE at a FINE and RENT; *A* MORTGAGEE of the FEE JOINS in the demise, and the TRUSTEES of the settlement are made parties in order to give RECEIPTS.

Parties.    THIS INDENTURE, made the            day of            ,  
BETWEEN *A. B.* of &c. [*tenant for life*] of the first part, *C. D.* of &c. and *E. F.* of &c. [*trustees of the settlement*] of the second part, *G. H.* of &c. [*mortgagee in fee of the settled land*] of the third part, and *I. K.* of &c. [*lessee*] of the fourth part:

Recitals :    WHEREAS by an indenture of settlement, dated &c.,  
Seisin of    and expressed to be made between &c. [*parties*],  
tenant for    the house and hereditaments hereinafter expressed  
life.            to be demised were (with other hereditaments) assured to the use of *W. B.*, since deceased, for his life, with remainder to the use of *A. B.* for his life, with divers remainders over, subject nevertheless to a mortgage in fee simple of the same hereditaments effected by an indenture of mortgage dated &c. and expressed to be made between &c. [*parties*], for the purpose of securing to *G. H.* the payment



of a principal sum of £            and interest thereon : **Lease of a House.**  
**AND WHEREAS** by the said settlement a power **Trustees.**  
of sale of the hereditaments therein comprised  
was vested in *C. D.* and *E. F.* as trustees of  
the same settlement : **AND WHEREAS** *A. B.* has **Agreement for lease.**  
agreed to demise to *I. K.* the house and here-  
ditaments hereinafter described in consideration of  
the sum of £            by way of fine or premium, and  
of the rent and lessee's covenants hereinafter re-  
served and contained respectively : **AND WHEREAS** **Mortgage debt.**  
the said sum of £            , together with some interest  
thereon, is now owing on the security of the said  
indenture of mortgage : **AND WHEREAS** upon the **Fine to be applied towards payment thereof.**  
treaty for the said demise it was agreed between  
the parties to these presents that the said fine or  
premium of £            should be paid to *G. H.* in par-  
tial discharge of the principal moneys and interest  
so owing to him as aforesaid, and that *G. H.* and  
also *C. D.* and *E. F.* should join in these presents  
in manner hereinafter appearing ; Now **THIS IN-** **Witnesseth.**  
**DENTURE WITNESSETH**, that in pursuance of the  
said agreement, and in consideration of the sum of  
£            by way of fine or premium paid by *I. K.*  
to *G. H.* at the request and by the direction  
(hereby testified) of *A. B.* and also of *C. D.* and  
*E. F.* (the receipt and payment to *G. H.* of which  
sum of £            *G. H.* doth, and also *C. D.* and  
*E. F.* do (a), hereby acknowledge) : **AND ALSO** in  
consideration of the rent and lessee's covenants

(a) The receipt of the trustees is requisite in order to effectually discharge the payor of the fine therefrom, and from being concerned to see to the application thereof. See sect. 40 of the Settled Land Act, 1882, *ante*, p. 83.

**Lease of a House.** hereinafter reserved and contained, *A. B.*, in exercise of the power in that behalf given to him by the said Settled Land Act, and of all other powers whatsoever, conveys and demises, *AND G. H.* (for the purpose of signifying his consent to the demise hereby granted) hereby confirms unto *I. K.*, ALL THAT messuage or dwelling-house known as No. , Street, and situate in the parish of , in the county of , late in the occupation of , To HOLD the premises hereby demised with the appurtenances unto *I. K.*, from the day of next, for the term of years, YIELDING and paying therefor, &c. [*Reddendum and covenant to pay rent, &c. as in last Precedent*] : *AND ALSO* will during the term keep the premises, and all fixtures and addition thereto, in good condition and substantial repair : *AND ALSO*, will in every third year paint all the outside woodwork and ironwork belonging to the premises with two coats of proper oil colours in a workmanlike manner : *AND ALSO* will in every seventh year paint the inside wood, iron and other works now or usually painted with two coats of proper oil colours in a workmanlike manner : *AND ALSO* wash, stop, whiten or colour such parts of the premises as are now plastered : *AND ALSO* will keep insured the premises to the amount of £ at least in some fire insurance office, to be approved of by *A. B.*, and will upon the request of *A. B.* show the receipt for the last premium paid for such insurance for every current year : *AND ALSO* that *I. K.* will as often as the premises hereby demised shall be damaged by fire or

**Demise.**

**Parcels.**

**Habendum.**

**Reddendum.**

**Covenants by lessee to repair,**

**to paint,**

**to insure,**

**to lay out insurance moneys in re-building,**

other accident insured against, expend all moneys which shall be received by him in respect of such insurance in rebuilding or repairing the said demised premises or such parts thereof as shall be so damaged: AND IT IS HEREBY AGREED, that it shall be lawful for *A. B.*, and all persons authorized by him, at all reasonable times during the said term, to enter the premises to examine the condition thereof: AND FURTHER, that *I. K.* will repair and make good all defects, which upon any such view shall be found, and for the amendment of which notice in writing shall be left at the premises within three calendar months next after every such notice: AND ALSO, that *I. K.* will not use or suffer to be used the premises as a shop, warehouse, or other place for carrying on any trade whatsoever, or otherwise than as a private dwelling-house, without the consent in writing of *A. B.*, And will not without the like consent assign or underlet the premises: AND FURTHER, that the lessee will, at the expiration or other sooner determination of the said term, peaceably surrender and yield up unto *A. B.* the premises hereby demised with the appurtenances, together with all buildings, erections and fixtures now or hereafter to be built or erected thereon in good and substantial repair and condition in all respects, and without alteration, except such as *A. B.* or his successors in title shall consent to in writing: [*Proviso for re-entry and covenant for quiet enjoyment, ante, p. 327.*] IN WITNESS, &c.

Lease of a House.

to permit  
leave to  
enter,

to repair,

to use as a  
private  
house,

to yield up  
possession  
at end of  
term.



Building  
Lease (a).

XX. LEASE *for 600 YEARS of a PIECE of BUILDING LAND at several increasing RENTS, under an ORDER of the COURT, authorizing a TENANT for LIFE generally to GRANT such LEASES in the district.*

Parties. THIS INDENTURE, made the            day of            ,  
BETWEEN *A. B.*, of &c. [*tenant for life*], of the one  
part, and *C. D.*, of &c. [*lessee*], of the other part :

Recitals : WHEREAS under or by virtue of the settlement  
created by the will of *W. B.*, late of &c., deceased,  
dated &c., and proved &c., *A. B.* is beneficially  
entitled as tenant for life in possession of (amongst  
other hereditaments) the hereditaments hereinafter  
described, with divers remainders over: AND  
WHEREAS by an order of the Chancery Division  
of the High Court of Justice made on the  
day of            , by Sir            , one of the justices  
of the said division, in the matter of the Settled  
Land Act, 1882, and in the matter of the settled  
lands situate in the district of            , in the county  
of            , devised by the will of *W. B.* deceased,  
upon the application of *A. B.*, the Court, being of  
opinion that it was difficult to make leases or grants  
for building purposes of land, situate in the dis-  
trict of            aforesaid, except for a longer term  
than the term specified in that behalf by the said

(a) A form of agreement for leasing land for building purposes, providing for apportionment of the rent in respect of the different tenements to be comprised in the several leases to be granted on completion of the intended houses, will be found in Woodfall's Landlord and Tenant, 12th ed., p. 869.

(b) The order here recited is taken from the order made in *Re Cross's Charity* (27 Beav. 592), slightly adapted to meet the requirements of the Settled Land Act, 1882, s. 10, *ante*, p. 37.

Act, and that it was proper and consistent, with a due regard to the interest of all parties interested under the said will, that a power to grant building leases for any term not exceeding 600 years, and to enter into building contracts respecting the lands, should be vested in *A. B.* and each of his successors in title, being a tenant for life of the settled lands devised by the said will, or having the powers of a tenant for life over the same under the said Act, ordered that a power to grant such building leases, and to enter into such contracts from time to time, subject to the provisions and restrictions in the Act contained, should vest in *A. B.* and his successors in title as aforesaid: AND WHEREAS *A. B.* has agreed with *C. D.* to grant him a lease of the hereditaments hereinafter described at the rent and upon the terms and conditions hereinafter reserved and contained; Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the rent hereinafter reserved, and of the covenants and agreements by *C. D.* hereinafter contained, *A. B.*, as beneficial owner, and in exercise of the power in that behalf so vested in him by the order of the Court as aforesaid, and of all powers given to him by the Settled Estates Act, 1882, and of any other power whatsoever, hereby conveys and demises unto *C. D.* ALL THAT piece or parcel of land [*parcels, and, if required, reservation of mines and minerals, p. 315*] To HOLD the premises hereinbefore expressed to be hereby demised [subject as aforesaid] to *C. D.* from the day of last, for the term of 600 years then next ensuing: YIELDING AND PAY-

**Building  
Lease.**

---

Agree-  
ment for  
lease.

Wit-  
nesseth.

Demise.  
Parcels.

Haben-  
dum.

Redden-  
dum.

**Building  
Lease.**

Covenants  
by lessee  
to pay  
rent and  
taxes,  
to fence  
off the  
building  
land,

to erect  
dwelling-  
houses,

ING the several yearly rents following,—that is to say, for the first year of the said term, a peppercorn rent, if demanded; for the second year thereof, the rent of £           ; for the third year thereof, the rent of £           ; and for the fourth and for each and every subsequent year during the said term the full yearly rent of £           : [*Covenants by lessee to pay* “the several rents hereby reserved,” *and to pay taxes, &c., ante, p. 327.*] AND that *C. D.* will, within           months from the date of these presents, at his own cost, sufficiently fence off the land hereby demised, so as to protect the adjoining land from trespass and damage, with a substantial wood paling, or with a brick wall of at least nine inches thick, to the satisfaction of *A. B.* or his surveyor or agent for the time being, AND that he will within the period of five years from the           day of           18   , lay out and expend the sum of £           at the least, by an expenditure of not less than £           during the first two years ending the           day of           18   , and the further sum of £           at the least during the three next succeeding years ending the           day of           18   , such sums of money to be laid out and expended in the erection and completion on the land hereby demised of good and substantial messuages or dwelling-houses at the cost of £           at the least for each messuage or dwelling-house with its appurtenances: AND all such messuages or dwelling-houses to be built of solid brick or stone, with roofs of best slate or ornamental tiles, with suitable gardens, outbuilding and offices, drains and sewers attached thereto,

**Building  
Lease.**

---

and with good, well-seasoned and proper materials of all kinds, and each messuage or dwelling-house to be well and sufficiently fenced off as aforesaid from the adjoining premises, all such erections and works to be according to plans, elevations and specifications to be previously approved by the surveyor for the time being of *A. B.*, and to be completed under the inspection and to the satisfaction of such surveyor:

AND IT IS HEREBY AGREED and declared that *C. D.* shall be at liberty to make and open and lay out such roads, ways, streets and squares in, through, over or upon the said piece or parcel of land hereby demised as he shall think proper or most advantageous, the plans of all such proposed roads, ways, streets and squares being first submitted to and approved by the surveyor for the time being of *A. B.*: AND IT IS HEREBY AGREED and declared that *C. D.* shall, at his own cost, complete, or cause to be completed, all such roads, ways, streets and squares, and the approaches thereto, and the drains and sewers connected with the houses to be built as aforesaid, within five years of the date of these presents to the satisfaction in all respects of the said surveyor: AND IT IS FURTHER AGREED and declared that when and so soon as any plans or elevations of the said messuages or dwelling-houses, roads, ways, streets and squares, drains, sewers and other works hereby agreed or authorized to be constructed shall have been approved of by the surveyor for the time being of *A. B.*, he, *C. D.*, shall and will, at his own cost, cause

to make  
streets,  
&c.,


to deposit  
copies of  
plans.

**Building  
Lease.**

---

Proviso for  
re-entry.

good and accurate copies or tracing thereof to be deposited with such surveyor, and that no messuage, building or work whatever shall be erected, made or constructed by *C. D.* upon the said piece or parcel of land hereby demised, or upon any part thereof, except only in accordance and in conformity with the stipulations and provisions herein contained respecting the erection and construction of the messuages, buildings and works hereby agreed or authorized to be erected, made and constructed on the said land : PROVIDED ALWAYS, that if the several rents hereby reserved respectively, or any of them, or any part thereof respectively, shall be unpaid for thirty days after any of the days on which the same ought to have been paid respectively, or if the lessee shall not in the manner and within the respective periods aforesaid expend in and about the erection of such messuages or dwelling-houses and buildings as aforesaid the sums hereinbefore agreed to be expended in the making and completing and rendering fit for habitation the same upon the ground hereby demised, and shall not in all other respects carry out into complete effect the covenants and agreements hereinbefore contained, and on his part to be performed and observed, it shall be lawful for *A. B.* at any time after such default shall have been made as aforesaid to re-enter upon the premises, and thereupon this demise shall determine. [*Covenant for quiet enjoyment, ante, p. 327.*] IN WITNESS, &c.





**XXI. LEASE by TENANT for LIFE of COAL MINES in  
Lancashire.**

**Mining  
Lease.**

THIS INDENTURE, made the            day of            ,  
BETWEEN *A. B.* of &c. [*tenant for life*], of the one            Parties.  
part, and The            Coal Company, Limited

(hereinafter called the Company), of the other  
part; WITNESSETH, that in consideration of the            Wit-  
rent hereby reserved, and of the covenants and            nesseth.

conditions hereinafter contained, and on the part  
of the company to be observed and performed,  
*A. B.* as beneficial owner, in exercise of the power  
in this behalf given to him as tenant for life by  
the Settled Land Act, 1882, of the lands subject to  
the settlement created by the will of *W. B.*, late  
of &c., deceased, and of any other power what-  
soever, demises unto the company ALL AND EVERY            Demise.  
the mines, delfs, beds and veins of coal and            Parcels.

cannel already opened and found, or which  
hereafter shall be found or discovered, in any part  
or parts of the said settled lands situate in the  
several townships of            and            , in the  
county of            , in whose occupation soever the  
same, or any part thereof, now are or hereafter,  
during the term for which the aforesaid mines  
are intended to be hereby demised, shall happen  
to be: AND ALSO full and free liberty for the  
company, by themselves, their servants, agents or  
workmen, from time to time, during the term  
hereinafter mentioned, to enter into and upon  
and within the aforesaid lands and premises, and  
to bore, search for, dig, sink, sough, get, stack, load,  
take, carry away, sell and dispose of the coal and

Liberties,  
powers  
and privi-  
leges,  
to work  
mines,

**Mining  
Lease.**to sink  
pits, &c.,to erect  
engines,to make  
roads,to erect  
cottages,

cannel within and from and out of any part of the premises at their will and pleasure, and to have and receive for their own use all profits arising from such sales: AND ALSO from time to time to sink any pits and shafts, and to make any soughs, tunnels, drains and watercourses within any part or parts of the aforesaid premises: AND ALSO to erect and make, and from time to time, as exigencies may require, to pull down and remove any engines, gins, whimseys, wheels or other machines, and proper and convenient works whatsoever in or upon any of the lands aforesaid, for the draining, unwatering and laying dry, and for working and carrying on, the collieries, and for the use of such engines, machines and necessary works to collect and divert all streams of water flowing, running or arising within the lands aforesaid, and for the like purpose to make reservoirs to hold the waste water: AND ALSO to make any roads or ways navigable, cuts, trenches, tunnels, docks, wharfs, and places and conveniences on the premises for the banking, stacking, conveying and carrying away such coals and cannel: AND ALSO for the accommodation of colliers and workmen to erect and build cottages and dwelling-houses upon such parts of the premises as shall from time to time be appointed by A. B. or his successors in title, or his or their agent for the time being, and without any such appointment to erect and build any cottages or dwelling-houses contiguous to any fire-engine, or at the mouth of any navigable tunnel, or adjoining to any wharf or coal yard that may be made

at the mouth of such tunnel, for the habitation of a person or persons necessarily attendant on such fire engine and at such tunnel, wharf or coal yard : AND ALSO to get stone, sand and gravel for making roads, and clay or loam for making bricks in some convenient place or places within or upon the premises to be used in or about the colliery or coal and cannel works, and for such cottages and dwelling-houses as aforesaid only and not for any other use or purpose whatsoever, such stone, sand, gravel, clay and loam to be gotten in such place and parts of the premises as shall from time to time be appointed for that purpose by *A. B.* or his successors in title, or his or their agent for the time being, and not elsewhere, upon previous application being made by the company to *A. B.* or his successors in title, or his or their agent or agents for the time being; and if after application made for the several purposes aforesaid, *A. B.* or his successors in title, or his or their agent for the time being, shall refuse or neglect to make such appointment for the purposes aforesaid for the space of twenty-one days, that then and in such case it shall be lawful for the company or their agents to erect such cottages and buildings, and to get such stone, sand, gravel, clay or loam for the purposes last aforesaid in some convenient place or places where they shall fix upon, on giving one month's notice in writing for that purpose to *A. B.* or his successors in title, or the agent for the time being acting in the management of the estate, of such their intention, and of the place where they intend to erect such cottages

**Mining  
Lease.**

---

to get  
stone, and  
make  
bricks,

**Mining  
Lease.**

to do other  
necessary  
acts,

to remove  
machinery  
at end of  
term.

and buildings, or to get such stone, sand or grave respectively as aforesaid, unless within one month from the personal service of such notice *A. B.* or his successors in title, or such agent as aforesaid, shall make such appointment for the purpose or purposes required: AND ALSO full liberty of ingress, egress and regress to and for the company, and their agents, servants, workmen and customers, on foot or with horses and other animals, carts, waggons and, carriages, and machines of every description, in, over and through any part or parts of the premises aforesaid for the getting, loading, taking, conveying and carrying away the coals and cannel from the mines hereby demised, or for bringing and laying down materials for sinking pits, or making roads, or doing any other works for the more effectual getting and carrying away the coals or cannel, or doing any other proper and convenient and necessary works for carrying on the colliery: AND ALSO, at the end or sooner determination of the term hereby demised to take down, remove, carry away and dispose of all such railed roads, engines, wheels, tools and utensils as are or shall be erected, made and brought upon the premises for the working and getting the mines, or which shall have been used in or about the same, unless *A. B.* or his successors in title shall be desirous of purchasing the same or any part thereof, in which case it shall be lawful for *A. B.* or his successors in title to take all or such of the said railed roads, engines, wheels, tools and utensils as he or they shall so desire to purchase as aforesaid, on paying to the company such a fair valuation for the same as

such railed roads, engines, wheels, tools and utensils may be worth to carry off, such valuation to be ascertained by arbitrators, to be appointed in manner hereinafter mentioned, To HOLD the mines, delfs, beds or veins of coal and cannel, together with the several liberties and powers hereinbefore demised, unto the company from the

**Mining  
Lease.**

---

**Haben-  
dum.**

day of            last past for the term of sixty

**Redden-  
dum.**

years next ensuing, YIELDING and paying therefor during the said term on the            day of            and

**Footage  
rent.**

the            day of            in every year the rents and royalties hereinafter mentioned, that is to say: In

respect of the mines hereby demised a rent after the rate £            for every acre that shall be gotten

and raised thereout of the thickness of one foot, including measuring, and reckoning therein, and

therewith all pillars, walls and ranges which the company may think proper to leave to support

the roof of the mines of coal and cannel hereby demised, and so in proportion for a greater or less

quantity in extent than an acre, and for a greater or less quantity in thickness than a foot of each and

every acre which the company shall yearly get within the premises hereinbefore mentioned: AND IN CASE

**Minimum  
rent.**

in any half-year during the said term the company shall not get and raise such a quantity of coal

and cannel out of the mines hereby demised as according to the said footage rent shall pro-

duce a clear minimum rent of £            , then such a sum as shall, together with the footage

rent payable in respect of coal and cannel actually gotten and raised during such half year shall

amount to the clear minimum rent of £            ,

**Mining  
Lease.**

Royalty  
for out-  
stroke  
from mines  
under  
other land.

and in respect of the right of outstroke from other mines, a royalty after the rate of            per ton of twenty hundred weight for all coal, cannel, stone or other minerals brought to surface during the preceding half year from any mine other than the mines hereby demised through the pits, whether existing or hereafter to be sunk during the said term in any part of the lands of *A. B.* hereinbefore mentioned, every payment of such royalty to be made on the rent day next ensuing after the said right of outstroke shall have been exercised: PROVIDED ALWAYS, that no pillars, walls or ranges that may be left for the support of the roof, nor any fault or bristle shall be deemed to be any defect in regard to the measurement of the mines hereby demised, or any deficiency in the same unless any such fault or bristle shall exceed one-fourth part of an acre: AND that in all cases where any such fault or bristle shall happen and be discovered, immediate notice thereof in writing shall be given to *A. B.* or his successors in title, or his or their agent or agents, in order that the same may be fairly tried, measured or ascertained, and that no rent shall be paid for any fault which shall exceed one-fourth part of an acre as aforesaid: PROVIDED ALWAYS, that if and whenever the company shall for any half year have paid the minimum rent of £            without having actually gotten in such half year such a quantity of coal and cannel out of the mines hereby demised as according to the said footage rent would have produced a clear minimum rent of £            , and the company shall in any subsequent half year or half years get such a quantity

Average  
clause.

**Mining  
Lease.**

of coal and cannel out of the same mines as according to the footage rent aforesaid would produce a half-yearly rent exceeding £       , the company and their assigns shall not be liable to pay any rent (other than the minimum half-yearly rent of £       ) for such quantity of coal and cannel gotten and raised out of the mines hereby demised as shall be required to make up the deficiency, but no excess of footage rent paid for any preceding half year shall be allowed to make good the deficiency in any subsequent half year: AND the company hereby covenant with *A. B.* in manner following, that is to say, that the company or their assigns will during the continuance of the term hereby demised pay unto *A. B.* or his successors in title the several rents and royalties hereinbefore reserved on the days and in manner hereinbefore mentioned, and also pay all leys, taxes, rates, charges, assessments and impositions of every description which are now or shall at any time hereafter be charged or imposed upon, or in respect of, the mines hereby demised or the rents or royalties hereby reserved, or any part thereof respectively, and from time to time keep freed and discharged *A. B.* and his successors in title, and his and their estates, lands, hereditaments, goods and chattels of and from the same and every part thereof, and from the payment thereof or of any part thereof: AND at the end or other sooner determination of the term hereby demised will peaceably yield, deliver up and surrender the mines and premises hereby demised, and all and every the cottages, dwelling-houses and buildings which

Lessee's  
covenants,

to pay  
rents and  
royalties,

and taxes,  
&c.,

to deliver  
up the  
mines, &c.  
at the end  
of the  
term,

**Mining  
Lease.**

to work  
the mines  
properly,

to deliver  
measure-  
ments,

shall hereafter be erected and built on the premises, with the appurtenances, unto *A. B.* or his successors in title: **AND FURTHER** that the company and their assigns will forthwith proceed to gait and prosecute the colliery and mines, and they and each of their agents, servants and workmen, will during the term hereby demised in the working of all or any of the mines observe and keep good and true levels, and get the same mines respectively clean and fairly before them, and in all things work the same in a fair, honest and good workmanlike manner, and as other works of the like nature are usually or ought to be worked, and with as little damage as may be to the surface of the lands hereinbefore mentioned, And also will leave substantial and sufficient walls, ranges and pillars as often as and where proper and necessary to be left for supporting the roof and roofs of such mines, levels and airways as shall be necessary from time to time to be made in the said mines for the getting and carrying on the same: **AND FURTHER**, that the company and their assigns will four times in every year during the continuance of the term hereby demised, if they shall be hereunto required, and within twenty days from the time of any such request being made in writing by *A. B.* or his successors in title, or his or their agent or agents, leave for him or them at a true, just and exact measurement of the quantity of each bed or mine, and the thickness thereof, which shall have been gotten since the last measurement and delivered in, particularizing also the place or places where the same shall have been gotten, such



account to be from time to time signed by the manager or principal agent of the company: AND FURTHER, that it shall be lawful for *A. B.* and his successors in title, and his or their agent or agents to be appointed for that purpose, as often as he or they or any of them shall think fit, from time to time during the continuance of the term, to descend any pits or shafts into the mines hereby demised to view and see that the same are fairly, duly and properly worked according to the covenants and agreements herein contained, and to inspect, measure and dial the same, so as to ascertain the real and actual quantity of coal or cannel gotten, or which may remain to be gotten by virtue of this demise, and to return back in like manner, and that the company and their assigns shall give and afford them, or any of them, all reasonable aid and assistance for the purposes aforesaid: AND FURTHER, that the company and their assigns will, at their own costs and charges, fence off and keep effectually fenced off such parts of the premises as shall from time to time during the continuance of the term hereby demised be used for pits, ways or roads, navigable trenches, wharfs or bankroom, or otherwise, in or about the working of the mines hereby demised, from other the adjoining lands of *A. B.* or his successors in title, and also fence the eyes of pits, and will hang and keep in repair sufficient and convenient gates in such fences for the necessary and convenient occupation of such lands, and for the passing and repassing of *A. B.* and his successors in title, and his and their lessees, tenants, and the agents, servants and workmen of him,

**Mining  
Lease.**

---

to permit  
the lessor  
to descend  
into the  
mines to  
view,

to fence off  
pits, &c.,

**Mining  
Lease.**

to pay  
compensa-  
tion for  
damages,

them, or any of them, on horseback or on foot, or with cattle, carts or carriages, to and from such lands for all purposes whatsoever: AND FURTHER, will pay to *A. B.* or his successors in title, or his or their lessees or tenants, as the case may be, on the            day of            in every year during the continuance of the term hereby demised full compensation for all damage that shall be sustained by breach, waste, or spoil of ground or otherwise to be occasioned by the sinking of pits, driving or making of soughs or drains, banking of coal, cannel, or slack, heap room, wharf room, or by making or using any ways, roads, watercourses, ditches, cuts, trenches, or sluices, or getting stone, digging clay, or making bricks, or otherwise in the prosecuting and carrying on the intended works, or the taking or using of all or any of the liberties or privileges hereinbefore granted in, upon or through any part of the lands hereinbefore mentioned, such compensation (if not agreed upon between the parties interested) to be ascertained by two arbitrators or their umpire in the usual manner: AND FURTHER, that the company and their assigns will, at their own proper costs and charges, with all convenient speed, when and as often as any pit or pits, road or roads will be disused, well and effectually fill up and level the same, and carry away and dispose of the slack, stone and rubbish which will remain round such pit or pits, or upon such road or roads, after filling up and levelling the same, and at the expiration or other sooner determination of the said term hereby demised, will clear the before-mentioned lands and grounds and every part

to fill up  
disused  
pits, &c.,

thereof from the stone, rubbish, and slack, that shall arise or be occasioned by the digging or working of the said mines, or by banking or laying coals or cannel thereon, or by roads made or used, or used by any other works that shall be made or carried on for any of the purposes hereinbefore mentioned, And will in a workmanlike manner level the brows, crops, ways, roads, ditches, fence, holes, and other places that shall be made for any of the purposes aforesaid, and ditch-up the old fences, and set with quickwood all such gaps as shall be made in any of the present fences, and will fill up and level all such eyes, pits, shafts, reservoirs, and holes, as shall then remain in any of the said lands and grounds :

PROVIDED NEVERTHELESS, that if the said *A. B.* or his successors in title shall desire to have any such ways, roads, pits, or fences preserved and kept open, and shall give reasonable notice thereof to the company and their assigns, in that case such ways, roads (with the liberty nevertheless for the said company and their assigns, subject to the condition hereinbefore mentioned to remove the rails and sleepers of any railed ways), pits, or fences, touching which such notice shall be so given, shall thereupon remain and be left open accordingly in the same condition as such ways (not being railed ways), roads, pits, or fences shall happen to be at the time of such notice given, and thereupon and from thenceforth the company or their assigns will be discharged from filling up, fencing about, levelling, or taking any further care thereof, and from all damages that may afterwards happen therefrom: PROVIDED ALSO,

**Mining  
Lease.**

---

unless  
lessor  
otherwise  
directs.

**Mining  
Lease.**

Lessees  
may throw  
rubbish  
into pits.

to permit  
lessor to  
inspect  
plans.

Power of  
distress.

that the company or their assigns shall not in cleansing the said grounds from the slack, stone, and rubbish in manner aforesaid be obliged to carry the same from off such grounds entirely, but shall and may lay and bestow the same in some convenient place or places to be appointed by *A. B.* or his successors in title, or his or their agent or agents for that purpose not to exceed in distance from such pits, roads, or places from which the same shall be removed yards, the best soil to be laid uppermost and the whole to be levelled in a workmanlike manner, so as to render the same equal at least in quality and value to the adjoining lands, the company and their assigns paying to *A. B.* or his successors in title, his or their lessees or tenants respectively, compensation for the damage done to his or their lands in or about the filling up and levelling the works aforesaid, and disposing of the slack, stones and rubbish aforesaid, such compensation (if not agreed upon between the parties interested) to be settled by arbitration as hereinbefore mentioned: **AND FURTHER**, that the company and their assigns will permit *A. B.* and his successors in title from time to time during the continuance of the term hereby demised to inspect and make extracts and copies of all such plans, remarks and accounts of borings as the company or their assigns shall make or cause to be made, or which they shall be in or can obtain possession of, touching or concerning the mines hereby demised, or the nature, situation and circumstances thereof in any wise: **PROVIDED ALWAYS**, and it is hereby agreed and declared, that when and so often as default shall be made in the

**Mining  
Lease.**

---

payment of the rents, royalties and sums of money herein reserved, or any of them, or any part thereof respectively, by the space of twenty days next after any of the days hereinbefore appointed for payment thereof respectively, it shall be lawful for *A. B.* or any of his successors in title to enter into and upon the premises aforesaid or any part thereof and to take, seize and distrain at any of the pits or pits-eyes of or belonging to the colliery or coal or cannel works, or the brows or banks, or at or within any of the tunnels or trenches intended to be made as herein mentioned, or at any port, wharf, dock or place, all or any part of the coals or cannel that shall be then gotten, or any of the engines, whimseys, boats, vessels, machines, wheels, gears, horses, tools, instruments, utensils, goods, chattels and effects whatsoever which shall or may be found upon or within the aforesaid lands or any part thereof and belonging to the colliery or coal and cannel works, or to the company or their assigns, and to sell and dispose of such distress and distresses until the rent, royalty or sum of money which shall so happen to be in arrear as aforesaid, together with all costs, charges and expenses attending such distress and sale shall be fully paid and satisfied: PROVIDED ALSO, that when and so often as any such default shall be made in payment of the said rents, royalties and sums of money as aforesaid, or if and so often as shall be a breach of any of the covenants or agreements by the lessees herein contained, or if and so often as the company or their assigns shall commit any voluntary waste in or upon the premises or any part thereof, otherwise than in proper exercise of the

Proviso for  
re-entry.

Mining  
Lease.

liberties hereinbefore granted to them, or shall enter into, make or execute any composition with or assignment for the benefit of their creditors, or shall become bankrupt, or commence to be wound up under any act or acts of parliament for winding up joint stock or other companies, then and in any such case it shall be lawful for *A. B.* and his successors in title into all and singular the demised mines and premises now or hereafter during the continuance of the said term to be opened, or into any of them in the name of the whole, to re-enter and the same and every part thereof, to recover, repossess and enjoy as of his and their former estate as if these presents had never been made, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. And *A. B.* covenants with the company that they rendering the accounts aforesaid, paying the rents, duties and sums of money hereinbefore reserved and made payable, and observing and performing the covenants, conditions and agreements hereinbefore contained, and on their parts to be observed and performed, shall and may peaceably and quietly have, hold and enjoy the colliery, and coal and cannel mines hereby demised, with all and every the liberties and privileges hereinbefore mentioned, for and during the term hereby demised thereof (determinable as aforesaid), without the let, eviction, molestation or disturbance of *A. B.*, his heirs or assigns, or any person or persons claiming by, from or under him or them, or his or their ancestors or testators, or any of them.

IN WITNESS, &c.

**XXII. SURRENDER (BY INDORSEMENT) of a LEASE**  
*with a view to the granting of a new Lease.*

**Surrender.**

THIS INDENTURE made the                      day of                      ,  
 BETWEEN the within-named *C. D.* [*the lessee*] of the                      Parties.  
 one part, and *A. B.* of &c. [*the tenant for life*] of the  
 other part: WHEREAS the within-named *D. B.* [*the* Recitals.  
*lessor*] made and executed his will dated &c., and Will of  
 thereby gave and devised all his real estate what- lessor.  
 soever and wheresoever unto *A. B.* for his life  
 with divers remainders over: AND WHEREAS *D. B.* Death of  
 died on the                      day of                      , and his will (with lessor.  
 a codicil thereto in nowise relating to his real  
 estate) was duly proved in the Principal Registry  
 of the Probate Division of her Majesty's High  
 Court of Justice: AND WHEREAS it has been Agreement  
 agreed between the parties hereto that *C. D.* shall for sur-  
 surrender the premises demised to him by the render  
 within-written indenture and that *A. B.* shall, and new  
 in exercise of his statutory powers as tenant for lease.  
 life of the settled lands devised by the said will,  
 thereupon grant to him a new lease of the same  
 premises for the further term of                      years: Now  
 THIS INDENTURE WITNESSETH, that in part per- Wit-  
 formance of the said agreement, and in considera- nesseth.  
 tion of the premises *C. D.* doth hereby assign and Surrender.  
 surrender unto *A. B.* and his heirs all &c. [*parcels*] Parcels.  
 with the appurtenances comprised in the within-  
 written indenture: To THE INTENT that the term  
 of                      years created by the within-written inden- To merge  
 ture may merge and be extinguished in the rever- in rever-  
 sion, freehold, and inheritance of the premises. sion.  
 IN WITNESS, &c.

## SECTION III.

## MISCELLANEOUS DEEDS.

**Disentail-  
ing Deed  
of Free-  
holds, &c.**

**XXIII.** DISENTAILING DEED *by* TENANT *for* LIFE  
*and* TENANT *in* TAIL *of* FREEHOLDS *and* MONEY  
*to be laid out in purchase of land to be settled (a).*

Recitals:  
of will  
creating  
the settle-  
ment;

of death of  
testator;

of sales  
under  
power;

THIS INDENTURE, made the            day of            ,  
BETWEEN *A. B.*, of &c. [*tenant for life*], of the  
first part, *C. B.*, of &c. [*tenant in tail*], of the second  
part, and *X. Y.*, of &c. [*grantee to uses*], of the  
third part: WHEREAS *E. F.*, late of &c., duly made  
and executed his will dated &c., and thereby gave  
and devised all his manors, messuages, lands and  
hereditaments situate in the county of            to the  
use of *A. B.* for his life without impeachment of  
waste, with remainder to the use of his first and  
other sons successively according to seniority in  
tail, with divers remainders over: AND WHEREAS  
*E. F.* died on the            day of            , and his said  
will was duly proved on the            day of            in the  
Principal Registry of the Probate Division of Her  
Majesty's High Court of Justice: AND WHEREAS  
*C. B.* is the first son of *A. B.*, and attained the  
age of twenty-one years on the            day of            ;  
AND WHEREAS several sales of settled land have  
with the consent of *A. B.* been made under a

(a) By sect. 41 of the Fines and Recoveries Act (3 & 4 Will. 4, c. 74) it is required that every disentailing assurance shall be enrolled in Chancery within six calendar months after execution.



power in that behalf contained in the said will, and other sales of such land have been made by *A. B.* in exercise of his statutory powers in that behalf, and all the hereditaments now remaining unsold, which are, or are believed to be, subject to the uses and limitations of the said will, are particularly described in the first schedule hereunder written: AND WHEREAS the moneys produced by such sales as aforesaid have been, in pursuance of the direction in that behalf contained in the said will, partly laid out in the purchase of other hereditaments, which are particularly described in the second schedule hereunder written, and partly invested in the several stocks, shares and securities particularly described in the third schedule hereunder written: AND WHEREAS *A. B.* and *C. B.* are desirous of disentailing all the hereditaments and premises now subject to the subsisting uses and limitations of the said will; NOW THIS INDENTURE WITNESSETH, that for effectuating the said desire, and in consideration of the premises, *A. B.*, so far as relates to the use for his life so limited to him as aforesaid, hereby grants and conveys, and *C. B.*, with the consent of *A. B.*, as protector of the settlement created by the said will (testified by his executing these presents), hereby grants, disposes of and conveys, unto *X. Y.*, ALL the manors, messuages, lands and hereditaments described in the first and second schedules hereunder written respectively, and all other (if any) the hereditaments own subject to the subsisting uses and limitations of the said will, To HOLD unto *X. Y.* in fee simple, freed from the estate for life of *A. B.* therein, and

**Disentailing Deed of Freeholds, &c.**

of investment of proceeds of sale.

Of desire to bar entail.

Witnesseth.

Grants. Parcels.

Habendum, freed from the entail.

**Disentailing Deed of Freeholds, &c.**

To such uses as tenant for life and tenant in tail shall appoint, and, in default, as tenant in tail shall appoint, and in default to previously subsisting uses of the settlement.

Witnesseth.  
Assignment

of moneys.

Habendum,

all powers of charging, and other powers annexed to or exerciseable during the continuance of the same estate, and also freed from the estate in tail of *C. B.*, and all remainders, estates and powers to take effect after the determination, or in defeasance of such estate, To SUCH USES, upon such trusts, and with and subject to such powers and provisions as *A. B.* and *C. B.* shall by deed or deeds jointly appoint, AND IN default of such joint appointment, or so far as no such appointment shall extend, To THE USES, upon the trusts, and with and subject to such powers and provisions, as *C. B.*, by deed, will, or codicil appoint, And in default of such appointment, and so far as no such appointment shall extend, To THE USES, upon the trusts, and with and subject to the powers and provisions which were subsisting with regard to the premises hereby conveyed immediately before the execution of these presents: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid *A. B.* hereby assigns, and *C. B.*, with the consent of *A. B.* as protector of the said settlement (testified by his executing these presents), hereby assigns and disposes of, to *X. Y.* all the moneys, stocks, funds and securities described in the third schedule hereunder written, AND ALL other (if any) the moneys, stocks, shares and securities which, or the proceeds of which, are liable to be laid out in the purchase of lands to be settled to the subsisting limitations of the said will, To HOLD to *X. Y.*, freed from all trusts or liabilities to lay out the same moneys, stocks, funds, shares, and securities, or any of them, or

the proceeds thereof respectively, in the purchase of land, and from the estate in tail of *C. B.*, and all remainders, estates, and powers to take effect after the determination or in defeazance of such estate], IN TRUST to permit *A. B.* to receive the income of the said moneys, stocks, funds, shares, and securities, during his life, and subject thereto IN TRUST for *C. B.* absolutely. IN WITNESS, &c.

Disentailing Deed of Freeholds, &c.

upon trusts.

XXIV. DISENTAILING DEED *by* TENANT *in* TAIL *in possession of* EQUITABLE ESTATE *in* COPYHOLDS (a).

Disentailing Deed of Copyholds.

THIS INDENTURE made the            day of           , 18   , BETWEEN *A. B.* of &c. [*tenant in tail in possession*] of the one part, and *C. D.* of &c. [*grantee*] of the other part: WHEREAS under or by virtue of the will of *D. B.* late of &c. deceased, dated &c., and proved &c., the legal estate in divers messuages, lands, and hereditaments, held by copy of court roll of the manor of           , in the county of           , are vested in trustees upon the trusts in the will mentioned, which have all now determined or ceased to take effect, and subject thereto upon trust for *A. B.* in tail, with divers remainders over; NOW THIS INDENTURE WITNESSETH, that for the purpose of barring the equitable estate tail of

Parties.

Recital of title.

Witnesseth.

(a) An equitable estate tail in copyholds may be barred, either by a disentailing deed entered on the Court Rolls, or by surrender. 3 & 4 Will. 4, c. 74, ss. 50, 53. The disentailing deed must be entered on the Court Rolls within six calendar months after execution. *Honeywood v. Foster*, 9 W. R. 855.

**Disentail-  
ing Deed  
of Copy-  
holds.**

**Parcels.**

**Haben-  
dum,  
freed the  
entail.**

**To the use  
of the  
grantor  
in fee.**

*A. B.* in the said copyhold premises *A. B.* hereby conveys and disposes of unto *C. D.* all &c. [*parcels*], and all other, if any, the copyhold or customary messuages, lands, and hereditaments, held of the said manor, and to which *A. B.* is entitled for an equitable estate tail in possession, To HOLD unto *C. D.* and his heirs freed and discharged from the equitable estate or estates tail of *A. B.*, and from all remainders, reversions, estates, rights, interests, and powers to take effect after the determination or in defeazance of such estate or estates tail, To THE USE of *A. B.* and his heirs. IN WITNESS, &c.

**Appoint-  
ment of  
new  
Trustees.**

**XXV. APPOINTMENT of a new trustee by ENDORSEMENT on deed of RE-SETTLEMENT.** [Precedent, No. III., ante, p. 273.]

**Parties.**

**Recites  
death of  
trustees  
Wit-  
nesseth.**

THIS INDENTURE made the            day of  
18   , BETWEEN the within-named *A. B.* and *C. B.*  
[*the tenant for life in possession, and first tenant for  
life in remainder, donees of the power under the settle-  
ment*] of the first part, the within-named *E. F.*  
[*the surviving trustee*] of the second part, and  
*J. K.* of &c. [*the new trustee*] of the third part:  
WHEREAS the within-named *G. H.* died on the  
          day of            last; Now THIS INDENTURE  
WITNESSETH, that they, *A. B.* and *C. B.*, in exercise  
of the power in this behalf given to them during  
their joint lives by the joint operation of the Con-  
veyancing and Law of Property Act, 1881, and  
of the within-written indenture, with the assent  
of *E. F.* (testified by his execution of these pre-

sents), hereby appoint *J. K.* to be a trustee of the within-written indenture in the place of *G. H.* deceased, as aforesaid, AND *A. B.* and *C. B.* hereby declare that all the manors, messuages, lands and hereditaments which are now subject to the uses, limitations and trusts of the within-written indenture shall vest in *E. F.* and *J. K.* as joint tenants in fee simple and as trustees for the purposes of the uses, limitations and trusts aforesaid of the within-written indenture. IN WITNESS, &c.

Appoint-  
ment of  
new  
Trustees.

Vesting  
declara-  
tion (a).



XXVI. APPOINTMENT of NEW TRUSTEES of a  
WILL of SETTLED LAND and PERSONAL ESTATE  
where NO PERSON has been NOMINATED by the  
*Will for that purpose.*

Appoint-  
ment of  
new  
Trustees.

THIS INDENTURE made the            day of  
18   , BETWEEN *E. F.*, of &c. [*the continuing trustee*], of the first part, *A. B.*, of &c. [*tenant for life in possession*], of the second part, and *J. K.*, of &c., and *L. M.*, of &c. [*the new trustees*], of the third part: WHEREAS *X. Y.*, of &c., duly made and executed his will, and thereby, after bequeathing the several specific and pecuniary legacies therein-mentioned respectively, devised all his manors, messuages, lands and hereditaments of every

Parties.

Recitals:  
Will  
creating  
settlement.

(a) This declaration will vest in the trustees all estate and interest in the land, being freeholds, without any conveyance, Conv. Act, sect. 34. This provision makes no reference to copyholds, which it is conceived must still be vested in trustees by actual surrender and admittance. The next precedent accordingly contains a covenant to surrender copyholds.

**Appoint-  
ment of  
new  
Trustees.**

---

tenure (including chattels real), to the use of *E. F.* and *G. H.* and their heirs, executors or administrators respectively, according to the tenure thereof respectively, IN TRUST for *A. B.* for his life, with remainder upon the trusts, and with and subject to the powers, provisoes and declarations therein declared concerning the same, AND the testator thereby bequeathed all his personal estate (except chattels real devised as aforesaid) unto *E. F.* and *G. H.*, upon the trusts and with and subject to the powers, provisions and declarations therein contained concerning the same, and appointed *E. F.* and *G. H.* executors of his will: AND

**Death of  
testator.**

WHEREAS *X. Y.* died on the            day of            , and his said will was duly proved on the day of            , in the Principal Registry of the

**Disclaimer  
of trustee.**

Probate Division: AND WHEREAS *G. H.* has refused to act in the trusts and powers reposed in or conferred on him by the said will, and has in nowise acted or interfered therein, and by a deed poll dated &c. under his hand and seal disclaimed [*recite the operative part of the deed of disclaimer*]:

**Desire to  
appoint  
new trus-  
tees.**

AND WHEREAS *E. F.*, with the approbation of *A. B.* (testified in manner hereinafter appearing), is desirous of appointing *J. K.* to be a trustee of the said will in the place of *G. H.*, and of also appointing *L. M.* to be a trustee thereof in order that the number of such trustees may be increased (*b*); NOW THIS INDENTURE WITNESSETH, that *E. F.*, in exercise of the power in this behalf given to him

**Wit-  
nesseth.**

(*b*) By sect. 31 (2) of the Conveyancing, &c. Act, 1881, it is provided that on an appointment of a new trustee, the number of trustees may be increased.

by the operation of the Conveyancing and Law of Property Act, 1881, and of every other power (if any) him hereto enabling, with the approbation of *A. B.* (testified by his execution of these presents), hereby appoints *J. K.* to be a trustee of the said will in the place of *G. H.*, and hereby also appoints *L. M.* to be an additional trustee of the same will, AND *E. F.*, with the approbation of *A. B.* (testified as aforesaid), HEREBY DECLARES that all the freehold hereditaments and chattels real, all the personal estate, and the right to recover all debts and other things in action, subject to the trusts of the said will respectively, shall vest in *E. F.*, *J. K.* and *L. M.*, and their heirs, executors and administrators: AND THIS INDENTURE ALSO WITNESSETH, that *E. F.*, with the approbation of *A. B.* (testified as aforesaid), covenants with *J. K.* and *L. M.* that *E. F.*, or his heirs, will, at the cost of the trust property, as soon as conveniently may be, surrender, or cause to be surrendered, into the hands of the lord of the manor of \_\_\_\_\_, according to the custom of the manor, ALL and singular the copyhold hereditaments comprised in the said will, and which are now subject to the trusts thereof, To HOLD to *E. F.*, *J. K.* and *L. M.*, according to the custom of the manor, by and under the rents, heriots, suits and services therefor due and of right accustomed, UPON THE TRUSTS of the said will. IN WITNESS, &c.

Appointment of new Trustees.

Appointment.

Vesting declaration.

Witnesseth.

Covenant to surrender copyholds (c).

Habendum,

upon trusts of will.

(a) See note (a), p. 357.

Dis-  
claimer.

**XXVII.** *DISCLAIMER of the trusts of a SETTLEMENT.*

Recital of  
settlement  
appointing  
trustees ;

that trust-  
ee has not  
acted.

Wit-  
nesseth.  
Dis-  
claimer.

TO ALL TO WHOM these presents shall come,  
*A. B.* of &c. [*the disclaiming trustee*] sends greeting :  
 WHEREAS, by an indenture dated &c., and made  
 &c., being a settlement made in consideration &c.,  
 the lands and hereditaments therein described  
 were conveyed to the use of *A. B.* and *C. D.* of  
 &c., for the estates and interests therein mentioned,  
 and upon the trusts and with and subject to the  
 powers, provisoes, and declarations therein de-  
 clared and contained concerning the same : AND  
 WHEREAS *A. B.* has refused to act as trustee of the  
 said indenture, and has never executed the same,  
 nor in anywise acted or interfered in the trusts  
 thereof ; NOW THESE PRESENTS WITNESS, that *A. B.*  
 hereby disclaims ALL and singular the lands and  
 hereditaments comprised in the said indenture,  
 and the office of trustee of the same and all es-  
 tates, interests, powers, rights, and privileges  
 under the same. IN WITNESS, &c.





**XXVIII. RELEASE to the TRUSTEES of a WILL** Release.  
*devising and bequeathing REAL and PERSONAL*  
*ESTATE upon TRUST for SALE and CONVERSION*  
*upon distribution of the trust property after the*  
*death of the "TENANT for LIFE" between the*  
*testator's two children, a daughter's share being*  
*transferred to the trustees of her marriage settle-*  
*ment (a).*

THIS INDENTURE, made the            day of            , Parties.  
 18    , BETWEEN *A. B.* of &c. [*son of testator*] of  
 the first part, *C. D.* of &c. [*husband of testator's*  
*daughter*] and *E. D.* his wife of the second part,  
*G. H.* of &c. and *J. K.* of &c. [*trustees of daughter's*  
*marriage settlement*] of the third part, and *L. M.*  
 of &c., and *N. O.* of &c. [*trustees of the will*] of the  
 fourth part: WHEREAS *P. B.* late of &c. duly Recitals.  
 made and executed his will dated &c. and thereby, Will.  
 after bequeathing the specific and pecuniary lega-  
 cies therein mentioned, devised all his real estate  
 whatsoever (including chattels real), he bequeathed  
 all his personal estate (except chattels real and  
 what should be otherwise disposed of by his will or  
 any codicil thereto) unto *L. M.* and *Q. R.* of &c. upon  
 trust for the sale and conversion into money of the  
 same respectively and upon trust [*recite trusts for in-*  
*vestment, for payment of income to testator's widow for*

(a) The recitals in a release should fully and explicitly detail all dealings with regard to the trust property, and explains the state of affairs with regard to it, and especially any breaches of trust which have been committed. However wide the terms of the operative part of the deed may be, they will only release claims set forth in the recitals. See *Lindo v. Lindo*, 1 Beav. 496; *Directors of L. and S. W. Rail. Co. v. Blackmore*, L. R., 4 H. L. 610; and see Dav. Conv. vol. v. pt. ii. p. 140, &c.

**Release.** *life or until re-marriage, and for benefit of issue as the widow should appoint, and in default of appointment to testator's children equally, to sons at 21 years of age, to daughters on attaining that age or marriage*], And the testator appointed *L. M.* and *Q. R.* executors of his will: AND WHEREAS *P. B.* died on the            day of           , leaving *A. B.* and *E. D.* (then *E. B.*) his only children him surviving, and his will was duly proved by *L. M.* and *Q. R.* in the Principal Registry of the Probate Division:

**Death of testator.** AND WHEREAS, after the death of the testator, *L. M.* and *Q. R.* possessed themselves of his real and personal estate, and sold and converted the same, except a leasehold house and grounds thereto belonging situate at           , and held for the term of twenty-one years from the            day of           , and out of the moneys arising from such sale and conversion, and out of the ready money of the testator, paid his funeral and testamentary expenses and debts, and invested the residue, amounting to £           , as to £           , on the security of a mortgage of freehold hereditaments situate at           , in the county of           , and as to £           , the residue thereof, in the purchase of £            £3

**Sale and conversion of estate.** per centum Consolidated Bank Annuities: AND WHEREAS *Q. R.* died on the            day of           , and by an indenture dated &c., and made between [*parties*], *N. O.* was duly appointed in his place to be a trustee of the said will: AND WHEREAS the

**Death of a trustee.** lease of the said leasehold premises expired on the            day of           , without the same premises having been sold, and it is apprehended that the omission to sell the same was a breach of trust

**Breach of trust.**

(f) Where breaches of trust have been committed, they should be particularly stated in the recitals, so that the releasors may not be able to say that they were ignorant of what had occurred. See Davidson, *Conv.* vol. v. pt. 2, p. 147.

<p><b>Release.</b></p> <p>ments to benefici- aries, &amp;c.</p>	<p>transferred the sum of £        £3 per cent. Con- solidated Bank Annuities into the names of <i>G. H.</i> and <i>J. K.</i> and have paid to them the sum of £ cash (being the moieties of the said sums of £ like annuities and £    cash respectively), to be by them held upon the trusts of the said indenture of settlement, and have transferred the sum of £ like annuities into the name of <i>A. B.</i>, and have paid to him the sum of £    cash (being the residue or other moiety of the said sums of £ like annuities and £    cash respectively), which transfers and payments respectively the parties hereto of the first three parts do hereby acknow- ledge; Now THIS INDENTURE WITNESSETH, that in consideration of the premises the several parties hereto of the first three parts respectively do, and each of them doth, hereby release and discharge <i>L. M.</i> and <i>N. O.</i> and each of them, their and his heirs, executors, administrators, estates and effects, and also <i>Q. R.</i> and his heirs, executors, administrators, estate and effects from all claims, demands, and accounts whatsoever, for or in respect of the real and personal estate of the said testator, or the trust funds for the time being representing the same, or the income thereof respectively, or for or anything done or omitted to be done by <i>L. M.</i> and <i>N. O.</i> or by <i>Q. R.</i> or any of them in the execution of the trusts of the said will, or for or in respect of any- thing relating to the premises. IN WITNESS, &amp;c.</p>
<p><b>Wit- nesseth.</b></p>	
<p><b>Release.</b></p>	

## INDEX TO STATUTES AND NOTES.

---

N.B.—The abbreviation "*Imp. Act*," denotes the *Improvement of Land Act*, 1864; "*S. E. Act*," the *Settled Estates Act*, 1877; "*Conv. Act*," the *Conveyancing and Law of Property Act*, 1881; and "*S. L. Act*," the *Settled Land Act*, 1882.

---

### ACCUMULATION,

of money paid for lease or reversion, 73.  
of surplus income during minorities, 112.

### ADMIRALTY,

may order survey at landowner's expense, 150.  
may remove abandoned improvements, 175.  
plan to be deposited with, of improvements below high water-mark, 149.  
saving of rights of, as regards improvements, 148—150.

ADMITTANCE, of purchasers of settled copyholds, 48.

### ADVERTISEMENTS,

under *Imp. Act*, 131.  
under *S. E. Act*, directed under special circumstances, 224.  
form of, 249.  
order as to issue of, 239.

ADVOWSON, included in definition of land, 24.

### AFFIDAVIT,

of fitness of trustee, 81.  
of no incumbrance, 226.

### AGREEMENT,

building, for leases in lots, 35.  
for settlement, included in definition of settlement, 19, 203.

### AGRICULTURAL LEASE,

custom of district not ground for extension of, 38.  
tenant for life may grant, 31, 234.

### ALIENATION,

estate for life terminable on, to continue notwithstanding, 101.  
extinction of powers by, 23.

**ANNUITY**, gift of land on trust to accumulate income subject to,  
22, 115.

**APPEAL**,

from chambers, 95.  
none, as to costs, 96.

**APPLICATION**,

dissent of persons, &c. interested from, under Imp. Act,  
132—136.  
investigation of applications under Imp. Act, 130.  
of money paid for lease on reversion, 73.  
to Court, under S. L. Act, 90.  
by petition under S. E. Act, 218.  
by summons in chambers under Imp. Act, 135.  
to commissioners to sanction improvements, 128.

**APPOINTMENT**,

of trustees by the Court, 77.  
remainderman may require, 103.  
under Conv. Act, 78.

**APPORTIONMENT**,

on leases of building land in lots, 35.  
on part surrender of lease, 41.  
of rent-charge under Imp. Act, 167.  
order of, form of, 169, 185.  
may comprise several charges, 170.

**APPROPRIATION** of land for streets, &c., 44, 216.

**ASSESSMENT**, public, for improvements, landowner may charge  
on inheritance, 161.

**ASSIGNMENT**,

powers of tenant for life not capable of, 99.  
rent-charge for improvements under Imp. Act, capable of,  
165.  
form of assignment of rentcharge, 184.

**ASSISTANT COMMISSIONERS**,

appointment, &c. of, not affected by S. L. Act, 97.  
inquiries to be conducted by, 131.  
may take declarations, &c., 120.

**AUCTION**,

tenant for life may sell by, 29.  
trustees for sale may sell by, 296.

**BANKRUPT**, powers, &c. under S. E. Act may be exercised by  
trustees or assignees of, 236.

**BASE FEE,**

definition of, 110.

powers under S. L. Act exercisable by owner of, 108.

**BENEFIT,** trust for sale of land and application of income for, of a person for life, a settlement under S. L. Act, 116.

**BEST RENT,**

leases of settled land must reserve, 32, 100, 208.

value of surrendered lease taken into account, 41, 209.

what is, a question for the jury, 33.

**BOARD OF TRADE,** saving of rights of, as regards improvements, 148.

**BUILDING LEASE,**

Court may authorize, on behalf of infant entitled subject to estate by curtesy, 111.

definition of, 21.

erection of buildings, &c., may be part consideration for, 34.

grant of, by tenant for life, 31.

nominal rent may be reserved for first five years, 35.

rent may be apportioned on lease in lots, 35.

repairing lease included in, under S. L. Act, 21, 25, 34.

streets, &c. may be required to be appropriated, 44.

variation of, by Court according to custom of district, 37.

**BUILDING PURPOSES,** definition of, 21.

**CAPITAL MONEY,**

arising from settled land in England not to be applied in purchase of land out of England, 57.

County Courts have jurisdiction as to, not exceeding 500*l.*, 91.

definition of, 20, 23.

devolution of, as land, 55.

investment of, 49, 55, 57, 116.

investment as, of money liable to be laid out in purchase of land, 72.

paid for lease or reversion, application of, 73.

**CERTIFICATE,**

as to execution of improvements, 65.

maintenance, &c. of improvements, 65.

copy (office) to be evidence of, 99.

discharge of land from rentcharge under Imp. Act by, 167.

**CHARGE,**

commissioners to execute, on completion of improvements, 156, 158.

equitable, trustees should not lend on, 85.

**CHARGE—continued.**

- exoneration of settled land sold, by transfer of, 30.
- expenses of application under Imp. Act, and contracts may be included in, 157.
- for improvements to be personal property, 163.
  - not to preclude trustees from investing in purchase or mortgage of lands, 163.
- for subscription towards construction of railways or canals, 175—182.
- grantee of absolute order under Imp. Act, to have priority over other, 162.
- multiplication of, 57, 289.
- redemption of, 50, 53.
- tenant for life may exercise powers notwithstanding, 20, 23.
- And see RAILWAY.

**CHATTELS**, settlement of, as heirlooms, 76.

**CHIEF RENT,**

- capital money may be applied in redemption of, 50.
- priority of, over charge for improvements, 162.
- what is, 54.

**CIVIL BILL COURT,**

- in Ireland, 121.
- jurisdiction of, as to settled land, 121, 122.

**CODICIL**, included in will, 22.

**COMMISSIONERS, LAND.** See **LAND COMMISSIONERS.**

**COMMISSIONERS OF SEWERS**, saving of rights of, 151.

**COMMISSIONERS OF WORKS**, saving of rights of, 146.

**COMMITTEE,**

- may dissent from applications under Imp. Act, 136.
- powers of lunatic tenant for life under S. L. Act may be exercised by, 114.
- represents lunatic in proceedings under S. E. Act, 236.

**COMMON**, re-grant of rights of, on enfranchisement, 30.

**COMPANY,**

- improvement, charge of expenses under Imp. Act, under acts of, 159.
- may exercise powers of Imp. Act, 159.
- water, saving of rights of, 154.

**COMPENSATION**, for damage to adjoining lands by execution of improvements, 171.



COMPROMISE, of actions relating to trust property, 76.

CONCURRENCE,

- in execution of improvements, 65.
- in exercise of powers under S. L. Act, 47.

CONDITIONS,

- depreciatory, sale by, restrained, 30.
- generally to be inserted in leases of settled land, 32.
- of re-entry, every lease of settled land to contain, 32, 209, 235.
- may contain reasonable qualifications, 34.
- special, in leases under sanction of the Court, 34, 210.
- on sales by tenant for life, 29.
- striking out of, that leases shall be settled by the Court, 213.

CONSENT,

- Court may dispense with, required by S. E. Act, 220, 223.
- tenant for life's, necessary, to exercise by trustees of powers, 106.
- whose, required under the S. E. Act, 2, 4.

CONSIDERATION,

- for building or mining lease may, in part, be improvement, 35.
- for surrender of lease, 41.
- for variation of contract, 70.

CONSTRUCTION of provisions in S. L. Act as to sales, &c., as extending only to sales, &c. under the Act, 106.

CONTRACT,

- not to exercise powers of tenant for life, void, 100.
- notice to trustees to be given one month before making, 88.
- tenant for life may enter into, for sale, &c. of settled land, 69.
- may sell by private, 29.
- trustees for sale may sell by private, 296.

CONVEYANCE,

- effect of, as regards settled land, 47, 48.
- tenant for life may execute, to complete sales, &c., 47.

COPARCEENERS,

- constitute together a tenant for life within S. L. Act, 20, 23.
- what are, 23.

COPYHOLDS,

- admittance of purchasers of settled, 48.
- commissioners to be styled land commissioners, 96.

**COPYHOLDS**—*continued*.

- conveyances by tenant for life of, to be entered on Court rolls, 48.
- enfranchisement on sale, 27, 42, 214.
- finances in respect of, 33, 42, 48.
- licences to lease, 42.
- "settled estates" within S. E. Act, 206.
- purchase of, with capital money under S. L. Act, 51.
- rights of lords of manors not to be prejudiced by leases of, 239.
- settlement of, acquired by purchase, &c., 57.
- surrender, whether required on sale under S. L. Act, 48.

**CORNWALL**, saving of rights of Duchy of, as regards improvements, 147.

**COSTS**,

- application of capital money in payment of, incidental to exercise of powers, 51.
- discretion of Court as to, not subject to appeal, 95.
- of application under Imp. Act, 136.
- under S. L. Act, 90.
- proceedings for protection, &c. of estate, 75, 76.
- of reference of differences under S. L. Act to Court, 87.
- payment of, out of settled property, 95.
- practice as to, 96.
- raising of, by mortgage under S. E. Act, 230.
- security for, 98.

**COUNTERPART**, lessee of settled land to execute and deliver, 32.

**COUNTY COURT**, jurisdiction of, as to settled land, 91.

**COURT**,

- application to, under S. L. Act, 90.
- under S. E. Act, 218.
- under Imp. Act, by summons, 135.
- by petition or summons, 90.
- for what purposes necessary under S. L. Act, 92.
- appointment of trustees by, 77, 80.
- declaration by, to free land sold from incumbrances, 167.
- definition of, 22.
- investment of capital money under direction of, 55.
- matters within jurisdiction of, assigned to Chancery Division, 90.
- meaning of, in Ireland, 121.
- money in, under Lands Clauses Acts, or S. E. Act, &c., may be applied as capital money under S. L. Act, 72.
- powers of, exerciseable from time to time, 105.
- to make orders as to costs, 90.

COURT—*continued.*

- payment into, 54, 90, 103.
- proceedings for protection or recovery of settled land under approval of, 75.
- questions of doubt under S. L. Act, sect. 56, may be submitted to, 106.
- reference of differences to, 87.
- scheme for improvements may be submitted to, 64.
- And see ORDER OF COURT.

COURT ROLL,

- conveyances on sales, &c. of settled copyholds to be entered on, 48.
- copy of, whereby land is settled, is a settlement, 19, 203.
- licences for leasing to be entered on, 42.

COVENANTS,

- for title whether to be inserted in settlements, 271.
- special, in lease authorized by Court under S. E. Act, 210.
- to pay rent, to be inserted in leases of settled land, 32, 209, 235.
- to repair, liability under, 38.

CROWN DEBT, expenses under Imp. Act recoverable as a, 130, 150.

CROWN RENT,

- capital money may be applied in redemption of, 51.
- what is, 54.

CROWN RIGHTS, saving of, as regards execution of improvements, 146.

CURTESY, TENANT BY,

- may exercise powers of a tenant for life, 109.
- what is, 111.

CUSTOM,

- of district, a ground for variation of leases, 37.
- of gavelkind, brothers, parceners, according to, 23.
- of manor, as to licences for leasing, 42.

DEDICATION for streets, &c., 44, 216.

DEED,

- conveyance of land and creation of easements, &c., by, 47.
- dedication of streets by enrolled, 44.
- disentailing, whether necessary before payment out of Court to tenant in tail, 226.
- leases of settled land to be by, 32.

**DEMESNE LANDS,**

- restrictions as to sale, lease, &c., of, 42.
- union of, with seignory, constitute a manor, 26.
- what are, 43.

**DRAINAGE**, authorized as an improvement under S. L. Act, 57.

**DUTY,**

- included in "rent," 21.
- several kinds of, 24.

**EASEMENT,**

- Court may authorize lease of, for forty years, 208.
- creation of, by deed, 47.
- lease of, by tenant for life, 31.
- tenant for life may sell, 27.

**ENFRANCHISEMENT,**

- application of capital money to, 51, 54.
- compellable under Copyhold Acts, 42.
- mortgage for, 46.
- previous to sale of settled land as freehold, 48.
- regrant of rights on, 30.
- tenant for life may effect, 27.

**EQUITY OF REDEMPTION**, "settled estate" within S. E. Act, 206.

**EVIDENCE,**

- copy of inrolment is, of original deed, 45.
- of execution of counterpart, execution, &c., of lease is, 32.
- of leasing licence, certificate of steward to be, 42.
- on applications to the Court generally, 89.
- to authorize leases under S. E. Act, 211.
- on appointment of new trustees, 81.
- punishment of persons giving false, under Imp. Act, 125.

**EXAMINATION,**

- assistant commissioners may conduct, of witnesses, 125.
- of married women, 236, 237.

**EXCHANGE,**

- effected hitherto under Inclosure Acts, 215.
- mortgage for equality money on, 46.
- S. E. Act contains no power to authorize, 215.
- settlement of land taken in, 57.
- tenant for life may make under S. L. Act, 27.

**EXEMPTION** of land from charges under Imp. Act, 169, 187.

**FEE FARM RENT,**

- exception of grant at, if made for value before conveyance under S. L. Act, 48.
- sale in consideration of, for building purposes, 38.
- what is, 38.

**FEEES,**

- order as to, under S. E. Act, 246.
- table of, under Imp. Act, 200.

**FINE,**

- definition of, 21.
- income or capital, 24, 33.
- leases by ecclesiastical corporations in consideration of, 34.

**FORFEITURE, incurred, by lease of copyholds without licence, 42.**

**GUARDIAN,**

- appointment of, for purposes of S. E. Act, 235, 236.
- evidence on appointment of, 243.
- form of summons for appointment of, 249.
- exercise of powers under S. L. Act by, 112.

**HEARING, order as to, under S. E. Act, 241.**

**HEIRLOOMS, tenant for life may sell, 76.**

**HERIOTS to be treated as income, 24, 33.**

**IMPROVEMENTS,**

- application to commissioners to sanction, 128.
- building lease may be granted partly in consideration of, 35.
- purposes include, 21.
- capital money may be applied in, 50.
- charges on land for, to be executed by commissioners, 156.
- commissioners may compel maintenance of, 173.
- may relieve from obligation to maintain, 174.
- may require alteration of proposed, 131.
- compensation for damage in execution of, 166.
- description of, authorized by S. L. Act, 59.
- extension of, enumerated in Imp. Act, 69.
- maintenance and repair of, 67, 170—175.
- mining lease may be granted partly in consideration of, 37.
- ornamental, not authorized by S. L. Act, 61.
- powers of commissioners under Imp. Act to extend to all Acts providing for, 97.
- report by tenant for life as to, 66.
- sanction by commissioners of, under Imp. Act, 137—140.

**IMPROVEMENTS**—*continued*.

specifications to be delivered before commencement of, 141.  
submission of scheme for, under S. L. Act, 64.  
timber planted as, not to be cut, 66.

**INCOME**,

definition of, 21, 24.  
of investments of "capital money" to go as land, 55.

**INCORPOREAL HEREDITAMENTS** included in "land," 20, 24.

**INCUMBRANCE**,

affidavit of no, 226.  
capital money may be applied towards discharge of, 50.  
tenant for life may exercise powers notwithstanding, 20.  
transfer of, on sale of settled land, 30.

**INFANT**,

absolutely entitled to be, as tenant for life, 111.  
appointment of, as trustee, 81.  
tenant for life, trustees, &c. may exercise powers on behalf of, under S. L. Act, 112.

**INROLMENT**,

copy of, evidence of original deed, 45.  
of deed of dedication for streets, &c., 44.

**INSURANCE** of buildings erected as "improvements," 65, 172.

**INVESTMENT**,

of capital money under S. L. Act, 49.  
consent of tenant for life necessary to change of, 55.  
interim, under S. E. Act, 227.

**IRELAND**,

agricultural or occupation leases may be granted for 35 years, 122, 207.  
definition of the Court in, 121.  
investment of trust funds in, 52, 297.

**JOINT TENANTS** constitute together a "tenant for life," 20.

**LANCASTER**,

jurisdiction of Palatine Court of Chancery of, 91, 232.  
rules for proceedings in, 91.  
saving of rights of duchy of, as regards improvements, 147.

**LAND**,

capital money under S. L. Act to be considered as, 55.  
definition of, 21, 23.  
purchase of, duties of trustees with regard to, 73.  
purchased, &c. under S. L. Act to be settled, 57.  
substitution of land acquired as security for charges, 58.

**LAND COMMISSIONERS,**

- application to, to sanction improvements, 128.
- approval of schemes for improvements by, 64.
- certificate of, as to execution of improvements, 64, 65.
  - prescribing period for maintenance, &c. of improvements, 65.
  - may be varied, 66.
  - to be filed, 99.
- constitution of, 96.
- definition of, 22.
- forms indicating particulars of information may be issued by, 129.
- powers of, exerciseable from time to time, 105.

**LANDOWNER,**

- commissioners may require, to give security for costs, 129.
- death of, pending completion of improvements, 139.
- interpretation of, within Imp. Act, 126.

**LANDS CLAUSES CONSOLIDATION ACTS,** money in court under, may be applied as capital money under S. L. Act, 72.

**LEASE,**

- application of money paid for, 73.
- completion of, by conveyance, 47.
- licence to copyholder to grant, 42.
- new grant of, on surrender, 41.
- power of court to authorize, under S. E. Act, 207.
- surrender of, 41.
- tenant for life may grant, 31, 234.

**LEASEHOLDS,** settlement of, on purchase under S. L. Act, 57.

**LEAVE TO BE HEARD,** orders as to, under S. E. Act, 244.

**LICENCE,**

- difference between, and leave, 25.
- for granting leases of copyholds, 42.
- included in definition of mining lease, 21, 25.

**LIMITED OWNERS** having powers of tenant for life, 22, 108.

**LUNATICS,**

- provision as to, in S. E. Act, 236.
- tenant for life, powers of, how exerciseable on behalf of, 114.

**MAINTENANCE,** trustees may apply income to infant's, 300.  
And see REPAIR.

**MANAGEMENT** of lands of infants, 266.

**MANOR**, definition of, 21, 26.

**MANSION-HOUSE,**

erection of, to be deemed an improvement, 60, 128.

interpretation of, 43.

lease of, not within powers of tenant for life under S. E. Act, 234.

restriction as to sale, lease, &c. of, under S. L. Act, 42.

**MARRIED WOMAN,**

appointment of, as trustee, 81.

examination of, 236, 237.

powers of tenant for life, how exerciseable by or on behalf of, 112.

restraint on anticipation by, 113.

**MEMORIAL**, registration of, of absolute order under Imp. Act, 160.

**METROPOLITAN BOARD OF WORKS**, protection of, as regards improvements, 152.

**MINES AND MINERALS,**

capital money may be applied in purchase of, 51.

definition of, 21.

development of, an improvement under S. L. Act, 61.

exception of, 27, 40, 45, 51.

reservation of undivided share in, consideration for exchange or partition, 46.

sale, exchange, partition, or lease of, apart from surface, 45.

settlement of, on purchase, &c. under S. L. Act, 58.

**MINING LEASE,**

definition of, 21.

execution of improvements may be part consideration for, 37.

grant of, under authority of Court for 60 years, 208.

by tenant for life for 60 years, 31.

minimum rent may be made payable, 36.

part of rent to be set aside as capital money, 39.

reservation of ore in lieu of rent, 37.

surface land may be granted by, for working the minerals, 37.

variation of, according to custom of district, 37.

**MINING PURPOSES**, definition of, 21, 25.

**MORTGAGE,**

assignment within S. L. Act, sect. 50, includes, 100.

definition of, 46.

for enfranchisement or equality of exchange, &c., 46.

receipts of trustees discharge mortgagees from seeing that money is wanted for purposes of S. L. Act, 83.

second, trustees ought not to lend on, 85.



NOTICE,

- of absolute order charging land for subscription to railways, &c., 178.
- of intended exercise of powers by tenant for life, 88, 89.
- service of, on application to Court under S. L. Act, 87.
- under Imp. Act, 126, 136.

ORDER OF COMMISSIONERS,

- absolute, creating rent-charge for improvements, 158, 160.
- evidence of charge, 160.
- form of, 183.
- sanctioning charge for subscription to railway or canal, 177.
- form of order, 178, 183.
- provisional, creates a charge in favour of landowner, 138.
- may be modified, 140.
- sanctioning improvements, 137.
- form of, 138, 183.

ORDER OF COURT,

- authorizing application of capital money on improvements, 62.
- directing as to costs of applications under S. L. Act, 90.
- as to costs of proceedings for protection of estate, 75.
- on petition, 90.
- on summons, 91.

ORDERS,

- issued under Imp. Act, 183.
- under S. E. Act, 236.
- And see RULES.

ORDERS (Consolidated),

- Ord. VI. rr. 9, 10...93.
- Ord. XXIII. r. 17...93.
- Ord. XXXIV. r. 1...93.
- Ord. XXXV...93, 94.
- Ord. XLI. r. 20...219.

ORDERS (Jud. Act, 1875),

- Ord. I. r. 3...93.
- Ord. V. r. 4...92.
- Ord. XVI. r. 7...220.
- Ord. XIX. r. 4...93.
- Ord. XXXI. rr. 1—10...94.
- Ord. XXXVI. r. 30...94.
- Ord. XXXVII. r. 2...93.
- Ord. LV. r. 1...96.

PALATINE, COUNTY. See LANCASTER.

PARK,

restrictions as to sale, lease, &c. of, under S. L. Act, 42.  
what is, 43.

PARLIAMENT,

Act of, whereby land is settled, included in definition of  
settlement, 19, 203.

application to, where powers by statute or settlement are  
insufficient, 40, 209.

rejection of, bars jurisdiction under S. E. Act, 224.

lands granted by, as reward for public service, 108, 110.

PARTICULARS,

of information as to improvements under Imp. Act, 129.  
form indicating the same, 189.

PARTITION,

best consideration to be obtained for, 29.

mortgage for equality money on, 46.

restrictions and reservations may be imposed on effecting, 29.

settlement of land acquired on, 57.

tenant for life may concur in effecting, 27.

PEPPERCORN RENT may be made payable in building or mining  
leases, 35.

PERSON includes corporation, 22, 128.

PETITION (UNDER S. E. ACT),

applications by, who may present, 218.

form of, 243.

necessary consents to, 219.

setting down for hearing of, 219.

title of, 243.

PETITIONS (GENERALLY), 92, 93.

PLACE OF WORSHIP, grant of site for, 28.

POSSESSION,

definition of, 21.

includes receipt of *net* income under S. L. Act, 109, 111.

*quære* under S. E. Act, 205.

leases of settled land to take effect in, within twelve months  
after date, 32.

POWERS OF TENANT FOR LIFE,

assignment or release of, void, 99.

additional, may be conferred by settlement, 107, 268.

**POWERS OF TENANT FOR LIFE—continued.**

- contract not to exercise, void, 100.
- extinction of, by alienation, 23.
- forfeiture not to be occasioned by exercise of, 102.
- notice to be given to trustees of intention to exercise, 88.
- to concur in partition of settled land, 27.
- to convey land sold, &c., 47.
- to enfranchise settled land, 27, 29.
- to exchange settled land, 27, 29.
- to lease settled land, 31, 32, 234.
- to sell settled land, 27, 29.
- prohibition or limitation against exercise of, void, 101.
- provisions of S. L. Act not to prejudice, given by settlement or statute, 106.

**PRELIMINARY CONTRACTS,**

- Court may sanction, under S. E. Act, 219.
- for leases under S. L. Act not to form part of title, 71.

**PROTECTION,**

- of estate, proceedings for, 75.
- of landowner's infant children under Imp. Act, 127.
- of purchasers, &c., 105.
- of trustees, 84—87.

**PUBLIC SERVICE, estates granted in consideration of, 108.**

**RAILWAY,**

- charge of lands with subscription to, 175—182.
- construction of, authorized as an improvement under S. L. Act, 60.

**RECOVERY of settled land, proceedings for, 75.**

**RE-ENTRY,**

- leases of settled land to contain condition for, 32, 209, 235.
- reasonable qualifications may be introduced in conditions, 34.

**RELEASE,**

- of land from charge under Imp. Act, 167.
- order of, form of, 169, 187.

**REMAINDER, estate in, not disposed of by settlement, 19, 204.**

**REMAINDERMAN,**

- action by, for neglect to maintain improvements, 103.
- remedies of, against tenant for life, 71, 103.

**RENEWAL OF LEASE,**

- on surrender, 41, 205.
- tenant for life under obligation to obtain, compellable to do so, 104.

**RENT,**

- apportionment of, 35, 41.
- definition of, 21, 24.
- minimum, may be made payable in a mining lease, 36.
- nominal rent may be reserved for first five years of term in respect of building land, 35.
- part of, arising from lease of mines, to be set aside, 39.
- reservation of ore in lieu of, 37.

**RENT-CHARGE,**

- capital money may be applied in redemption of, 50.
- reservation of, in mining lease, in respect of damage to surface, 29.
- apportionment of, under Imp. Act, 167.
- assignment of, 165.
- interest on arrears of, under Imp. Act, 165.
- recoverable as tithe rent-charge, 164.
- statutory remedies for recovery of, 255.
- tenant for life to keep down, 166.
- may deduct, 167.

**REPAIR,**

- covenant to, liability of assignee of grantee of land on, 38.
- what are requirements of, 36.
- of improvements, 65, 167, 170—175.

**REPAIRING LEASE,**

- Court may authorize, for sixty years, under S. E. Act, 208.
- included in "building lease" under S. L. Act, 35.

**REPEALED STATUTES—**

- 12 & 13 Vict. c. 100 .. 124.
- 19 & 20 Vict. c. 120 .. 240.
- 21 & 22 Vict. c. 77 .. 240.
- 22 & 23 Vict. c. 145, parts i. and iv., 123.
- 27 & 28 Vict. c. 45 .. 240.
- 27 & 28 Vict. c. 114, ss. 17, 18 and part of 21 .. 123, 131—134.
- 37 & 38 Vict. c. 33 .. 240.
- 39 & 40 Vict. c. 30 .. 240.
- 40 & 41 Vict. c. 18, s. 17 .. 123.

**RESERVOIR, construction of, authorized as improvement under S. L. Act, 60, 62.****RETROSPECTIVE, Settled Land Act, how far, 22.****REVERSION,**

- application of money paid for, 73.
- capital money may be applied in purchase of, 51.
- Crown rights to, bound by exercise of powers of tenant in tail, 108.
- estate in, not disposed of by settlement, 19, 204.

**REVERSIONER,**

action by, for neglect to maintain improvements, 171.  
remedies of, against tenant for life for improper exercise of powers, 71, 103.

**ROADS.** See **STREETS.**

**ROYALTY,**

included in "rent," 21.  
what is, 25.

**RULES,**

power to make, for purposes of S. E. Act, 230.  
for purposes of S. L. Act, 90, 91, 121.

**SALE,**

abortive attempt at sale, costs of, 30.  
best price to be obtained on, 29.  
completion of, by conveyance, 47.  
Court may authorize, under S. E. Act, 214.  
grant general powers of, under special circumstances, 215.  
fee farm rent may be reserved on, for building or mining purposes, 38.  
improvident, restraint of, 104.  
minerals apart from surface, 29.  
power of, given to tenant for life by S. L. Act, 27.  
to tenant for life, 105, 119, 215.  
trust for, of land, 22, 115.  
trustees with power of, are trustees of the settlement for purposes of S. L. Act, 20.

**SCHOOL,** grant of site for, 27.

**SECURITIES,** definition of, 22, 26.

**SECURITY FOR COSTS,** commissioners may require, under Imp. Act, 129.

**SEIGNORY OR LORDSHIP,**

capital money may be applied in purchase of, 51.  
included in "manor," 21.  
tenant for life may sell, 27.

**SERVICE,** address for, 246.

**SETTING DOWN** of petition under S. E. Act for hearing, 241.

"**SETTLED ESTATES,**" what are, within S. E. Act, 204.

**SETTLED LAND,**

definition of, 19.

determination, what is, governed by state of facts at time of settlement taking effect, 19, 204.

exchange of, in England, 30.

**SETTLEMENT,**

definition of, 19, 22.

reversion not disposed of, 19.

**SPECIFICATIONS,**

landowner to deliver, to commissioners before commencement of improvements, 141.

what, are required by the commissioners, 196.

**STAMPS,** order as to, under S. E. Act, 241.**STATUTES.** See TABLE OF STATUTES, *ante*, p. xxxiv.**STEWARD OF MANOR,**

certificate of, evidence of leasing licence, 42.

definition of, 21.

entry on Court rolls by, of conveyance under S. L. Act, 48.

**STIPULATIONS,**

sale, &amp;c. of settled land subject to, 29.

must be reasonable, 30.

**STREETS,**

construction of, as improvements under S. L. Act, 60.

dedication for, in building grant or lease, 44.

**SUCCESSION,** limitation by way of, what is, 19.**SURFACE (OF MINING LAND),**

grant of, 37.

reservation of, 45.

**SURRENDER,**

apportionment of rent on, 41.

consideration paid for, whether capital or income, 41.

new grant of lease on, 41, 209.

of settled copyholds on sale, &amp;c., under S. L. Act, 48, 49.

value of surrendered lease may be taken into account, 41, 209.

**SURVEYOR,** certificate of, as to execution of improvements, 65.**TENANT FOR LIFE,**

consent of, necessary to exercise of any power by trustees, 106.

to change in investments, 54.

**TENANT FOR LIFE**—*continued*.

- concurrence by, in executing improvements, 65.
- contracts for sale, &c. by, 69.
- default by, his estate liable to make good, 67.
- definition of, 20.
- direction of, investments to be made according to, 54, 55.
- exercise of powers by, notwithstanding incumbrances, 99, 100.
- execution of deeds, &c. by, for exercise of his powers, 105.
- gravel, &c. may be dug by, for repairs, 68, 69.
- leases by, under S. E. Act, 234.
  - under S. L. Act, 31—43.
- maintenance, insurance, &c. of improvements by, 67.
- notice to be given by, to trustees on exercise of powers
  - under S. L. Act, 88.
- petition under S. E. Act may be presented by, 213.
- reference to Court of differences between trustees and, 87.
- repairs of settled property by, 69.
- report by, as to state of improvements, 66.
- sale to himself of settled land by, 105, 119, 215.
- timber may be cut by, 67, 73.
- trustee for all parties interested, 102.
- waste by, 68, 69.
- who is, under settlement of land in trust for sale, 116.

**TENANT-IN-TAIL,**

- disentailing deed, whether necessary before payment out of Court to, 226.
- powers of tenant for life exerciseable by, 108.

**TENANTS IN COMMON** constitute together a tenant for life, 20.

**THAMES CONSERVANCY,** saving of rights of, as regards execution of improvements, 152.

**TIMBER,**

- cutting of, for repairs, by tenant for life, 67, 69.
- planted as "improvement" not to be cut, 66.
- ornamental, not to be cut, 69.
- sale of, 73, 214.
  - part of proceeds of, to be set aside, 74.
- tenant for life without impeachment of waste may cut, 68.
- what is, 74.

**TIME,** order as to, as regards proceedings under S. E. Act, 241.

**TITLE,**

- covenants for, whether to be inserted in settlements, 271.
- entry on Court rolls of so much of settlement as sufficient to show, 48.
- objections to, cannot be taken after conveyance under order of Court in the matter of the S. E. Act, 224.

**TITLE—continued.**

preliminary contract for lease not to form part of, 71.  
tenant for life may sell, subject to stipulations as to, 29.

**TOLLS,**

included in "rent," 21.  
several kinds of, 24.

**TRANSFER,**

of shares in railway held by landowner subscribing under  
Imp. Act, 179.

**TRUST,**

estates, devise of, now unnecessary, 302.  
for sale, settlement by way of, 21, 116.

**TRUSTEES AND TRUSTEE,**

application to Court for advice by, 107.  
capital money not to be paid to fewer than two, 82.  
consents of, under S. E. Act, on behalf of unborn children,  
219.  
definition of, 20.  
entitled to inspection or copy of petition under S. E. Act, 245.  
exercise of powers by, consent of tenant for life necessary  
to, 106.  
execution of deeds, &c. by, necessary for exercise of their  
powers, 105.  
imperative powers vested in, 118.  
liability of, for loss by improper investment, &c., 85.  
new, affidavit as to fitness of, 81.  
appointment of, by Court, 77.  
under Conveyancing, &c. Act, 1881 .. 78.  
consent of, to act, 82.  
costs of appointing, 96.  
in what events, may be appointed, 79.  
who may be appointed, 81.  
notice by tenant for life of intention to exercise powers  
to, 88.  
of application under S. E. Act, must be served on, 223.  
form of, 248.  
powers of leasing may be vested in, under S. E. Act, 212.  
protection of, 84—87.  
receipts of, sufficient discharges, 83.  
reimbursement by, for expenses purposely incurred, 87.  
retiring, consent of, necessary, 81.  
reference to Court of differences between tenant for life  
and, 87.  
tenant for life a, for all parties interested, 102.  
who are, under settlement of land in trust for sale, 116.  
with power of sale, are trustees for purposes of S. L. Act, 20.



**UNDERLEASE**, new lease on surrender takes effect in possession, notwithstanding unexpired, 33, 209.

**UNDIVIDED SHARE**, tenant for life may concur in dealing with, 47.

**VARIATION**,  
of contract by tenant for life, 70.  
of leases by Court, 37.

**WAR DEPARTMENT**, saving of rights of, as regards improvements, 150.

**WASTE**,  
equitable, estate for life without impeachment, &c. does not permit, 68.  
leases may be granted without impeachment of, 31, 207.  
protection as regards, in execution of improvements, 67, 145.  
restraint of, by tenant for life, 104.  
tenant for life impeachable for, may cut and sell timber under S. L. Act, 73.  
must set aside part of proceeds of timber sold, 74.  
must set aside part of rent of mines, 39.  
what is, 68.

**WATER COMPANIES**, protection of, as regards improvements, 154.

**WATER-LEAVES**,  
lease of, for forty years, under S. E. Act, 207.  
mining leases under S. L. Act may include, 45.

**WATER MILLS**,  
construction of, authorized as improvements, 60.  
lease of, for forty years, under S. E. Act, 207.

**WAY-LEAVES**,  
lease of, for forty years, under S. E. Act, 207.  
mining leases may include, 45, 209.

**WILL**, definition of, 22.

## INDEX TO CONVEYANCING PRECEDENTS.

---

ACKNOWLEDGMENT, of right to production of deeds, 304.

ADVANCEMENT,

clause as to, out of portions, 263.

out of presumptive shares of proceeds of sale, 299.

APPOINTMENT,

of executors, 295, 302.

of guardians, 302.

of trustees, 260, 295, 356, 358.

power of, of jointure rentcharge, 281, 291.

of portions, power of, 282, 292.

ASSIGNMENT,

of chattels, 270.

of leaseholds, 289, 351.

of moneys, &c., liable to be laid out in purchase of land,  
354.

AVERAGE CLAUSE, in lease of coal mines, 349.

CHILDREN,

power to appoint portions for, 280, 283, 292.

trust for, as tenants in common, 299.

in default of, 300.

COLLIERY, lease of, 337.

CONTINGENT REMAINDERS not to be prejudiced by provisions of  
name and arms clause, 287.

COPYHOLDS,

covenant to surrender, 269.

disentailing assurance of equitable estate in, 355.

**COVENANT;**

- for payment of principal and interest on mortgage, 324.
- for quiet enjoyment, in lease, 327.
- for title in a settlement, 271.
- to surrender copyholds, 269, 359.

**CROSS REMAINDERS**, in tail, 256.

**DECLARATION,**

- that trustees shall be trustees for purpose of S. L. Act, 259.
- vesting property in new trustees, 357, 359.

**DEDICATION** of land for streets, &c., 312.

**DEEDS**, acknowledgment of right to production of, 304.

**DELIVERY UP** of premises, covenant for, 331, 343.

**DISCLAIMER,**

- of trusts of a settlement, 359.
- recital of, 358.

**DISENTAILING DEED,**

- of equitable estate in copyholds, 355.
- of freeholds, 352.
- of money to be laid out in purchase of land, 354.

**DISTRESS**, power of, in lease of coal mines, 349.

**DOCUMENTS.** See **DEEDS**.

**ENFRANCHISEMENT**, deed of, 314.

**ENTRY.** See **RE-ENTRY**.

**EXCHANGE**, deed of, 317.

**FINE**, lease in consideration of, 328.

**FORMS, STATUTORY.** See **STATUTORY FORMS**.

**HEIRLOOMS**, settlement of jewels, plate, &c. as, 270.

**HOTCHPOT CLAUSE**, 262.

**INFANT**, partition by trustees on behalf of, 320.

**INSURANCE**, covenant for, 330.

INTEREST, covenant to pay, 324.

INVESTMENT clause in a will, 297.

JOINTURE,

limitation of, 254, 275.

power for husband to limit to future wife, 279.

tenants for life to charge, 281, 291.

LEASE,

building, 332.

of colliery, 337.

of farm, 325.

of house, 328.

LEASEHOLDS, assignment of, 289.

LIBERTIES, grant of, in mining lease, 337.

LIMITATIONS,

of life estate, 254, 258, 278, 288.

of estate in tail male, 256, 259, 278.

of estate in tail, 256, 278, 321.

of cross-remainders in tail, 256.

in fee simple, 304, 309, 312.

discharged from mortgage, 307.

from estate tail, &c., 353.

from incidents of copyhold or customary tenure,  
317.

in strict settlement by will, 290.

of a remainder in fee, 256, 259, 279, 289, 291.

of a rent-charge, 254, 259, 277.

of a term to trustees, 256, 259, 278.

to tenants in common in tail, 288.

to joint tenants in fee simple, upon trusts, &c., 319.

to settlor in fee till marriage and afterwards upon trusts,  
254, 258, 288.

of amount to be charged for jointures, 282, 292.

to be raised for portions, 284, 294.

MACHINERY, liberty to erect, grant of, 338.

MAINTENANCE, clause for, out of portions, 262, 293.

MANSION HOUSE, power to lease without consent of trustees, &c.  
268.

**MINES AND MINERALS,**  
 lease of, 337.  
 reservation of, 315.

**MORTGAGE,**  
 of settled lands, by tenant for life, 324.  
 recitals of, 305, 329.

**NAME AND ARMS CLAUSE,** 285.

**ORDER OF COURT,** recitals of, 308, 332.

**PARCELS,**  
 by reference to schedule, 258, 307, 309.  
 of a close of land, 304.  
 of a colliery, 337.  
 of a farm, 307.  
 of large estate, 258, 309, 353.  
 of a town-house, 330.

**PARTITION,** deed of, 320.

**PIN-MONEY,**  
 limitation of term to secure, 258.  
 trusts of term, 260.

**POWERS,**  
 of charging portions, 280, 283.  
 of jointuring, 279, 281.  
 of sale, extension of statutory, 268.  
 to lease settled land without notice, 265.  
 to appropriate whole of mining rent to use of tenant for life, 266.  
 to invest personalty in purchase of land, 301.  
 to postpone sale of land, 300.

**PRODUCTION of documents,** acknowledgment of right to, 304.

**PUBLIC WORSHIP,** grant of site for place of, 322.

**QUIET ENJOYMENT,** covenant by lessor for, 327.

**RECITALS,**

- of admittance to copyholds, 314.
- of agreement to enfranchise, 315.
  - for exchange, 318.
  - for partition, 321.
  - for lease, 327, 329, 333.
- of appointment, 362.
- of attainment of majority, 275.
- of a breach of trust, 362.
- of a contract, 303, 308, 310.
- of a conveyance, 313, 318.
- of a death, 305, 352, 356, 358, 361, 363.
- of a devise to bar entail, 353.
- of a disclaimer, 358.
- of a disentailing assurance, 275.
- of a fine, to be applied towards discharge of mortgage debt, 329.
- of an intended marriage, 275.
- of investment of proceeds of sales, 353.
- of a mortgage, 305, 329.
- of an Order of Court, 308, 332.
- of payment of purchase-money into Court, 303, 306, 309.
- of a sale by auction, 305.
- of sales, &c. under powers, 274, 353.
- of a settlement, 273, 314, 318, 320, 328, 359.
- of a valuation of fixtures, &c., 306.
- of a will, 303, 305, 310, 325, 332, 352, 355, 357, 361.
- that a trustee has not acted, 360.

**REDEMPTION, proviso for, 325.**

- RE-ENTRY, proviso for, in lease,**
  - for building purposes, 336.
  - of coal mine, 349.
  - of farm, &c., 327.

**REGRANT of common rights, 317.****RELEASE, to trustees of a will, 360.****RENT,**

- covenants to pay, 327, 334, 343.
- reservation of, ordinary, 326.
  - special, 334, 341.

**REPAIR, covenant to, 331.**

**RESERVATIONS,**

- of mines and minerals, 315, 326.
- of rent. See RENT.
- of sporting rights, 326.

**RESIDUARY PERSONALTY,** bequest of, to follow trusts, &c. of realty, 294.

**SALE,**

- devise of land on trust for, 296.
- extension of powers of, 268.
- recitals of, 274, 305, 353.
- recital of, under power in settlement, 274.

**SCHOOL,** grant of site for, 323.

**SETTLEMENT,**

- by deed, 254, 257, 273, 288.
- by will, strict, 290.
- upon trust for sale, 296.
- of chattels as heirlooms, 270.
- of copyholds, 269.
- of freeholds, 254, 257, 273, 290, 296.
- of leaseholds, 289.
- recitals of, 273, 314, 318, 320, 328, 359.

**SOLICITOR** trustee to be entitled to his costs, 302.

**STATUTORY FORMS,**

- of grant for site of place of worship, 322.
- of school, 323.
- of settlement on marriage, 254.

**SURRENDER,**

- of copyholds, covenant for, 269.
- of lease, 350.

**TENANT FOR LIFE,** extension of powers of, 265.

**TENANTS IN COMMON,** limitation to, in tail, 256.

**TERM OF YEARS,**

- for raising pin-money, 259.
- trusts of, 260.
- for portions, 256, 259.
- power to limit, 280, 283, 292.
- trusts of, 260.

TRUSTEES, declaration that trustees of settlement shall be trustees  
for the purposes of S. L. Act, 259, 295.

TRUSTS,

of copyholds to correspond with uses of freeholds, 269.  
for investment, 297.  
for sale, devise of land on, 296.  
for settlor's widow and issue, 299.  
of term for raising pin-money, 260.  
portions, 260.

VESTING, declaration of property on appointment of new trustees,  
357, 359.

WAY-LEAVE, grant of, 311.

WILL,

recitals of, 303, 305, 310, 325, 332, 352, 355, 357, 361.  
settlement by, on trust for sale, 296.  
strict settlement by, 290.



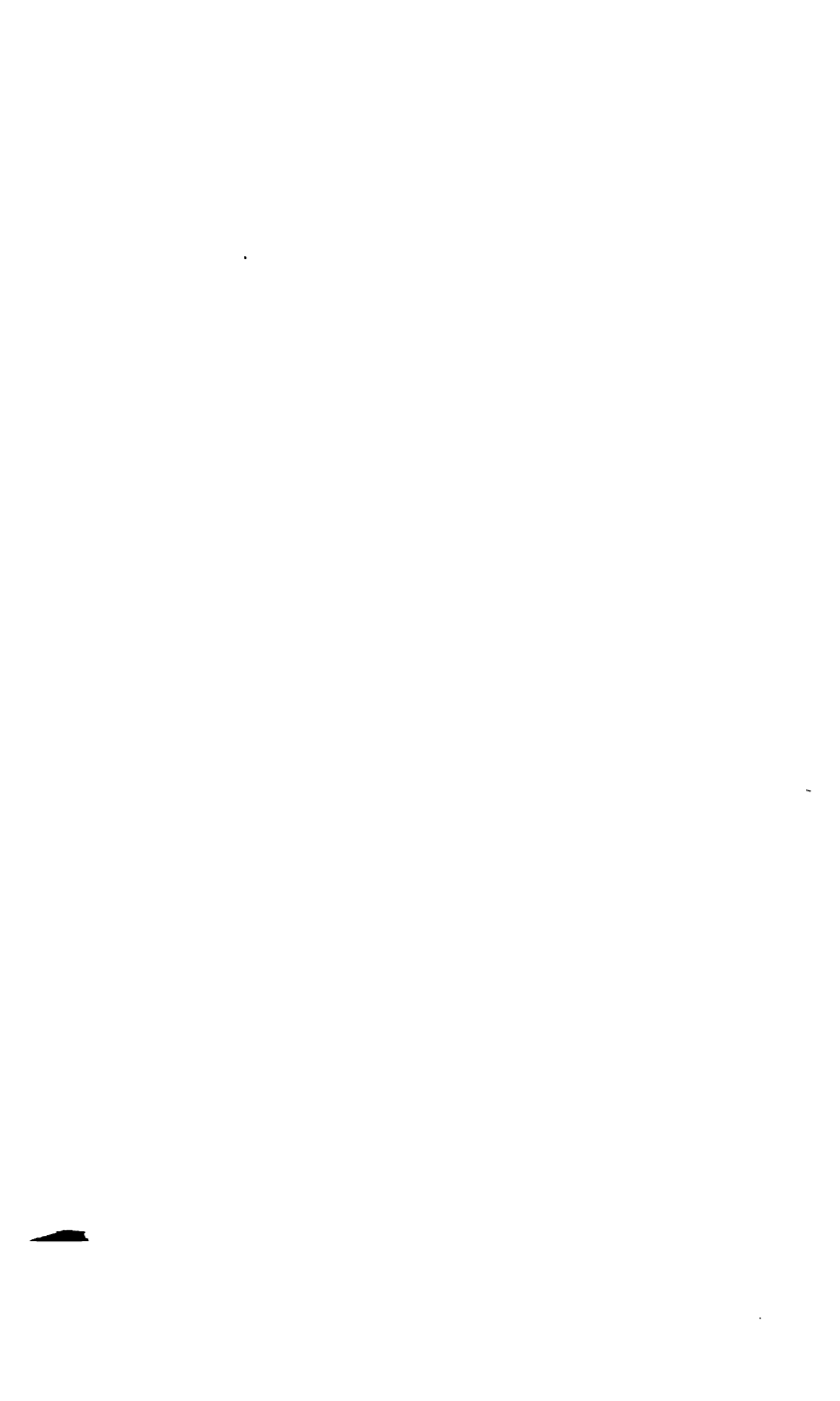














3 6105 062 006 478